

The Brooklyn Hospital Center and James Farmer, Juan Quiles, Accie Little, Maria Ramos, Leonard Washington, and Iraida Cabrera and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO, Party to the Contract

The Brooklyn Hospital Center and James Farmer, Accie Little, Maria Ramos, Leonard Washington, and Iraida Cabrera and New York State Nurses Association, Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, Parties to the Contract

The Brooklyn Hospital Center and James Farmer, Maria Ramos, Leonard Washington, and Iraida Cabrera and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO, Party to the Contract. Cases 29-CA-13813, 29-CA-13842, and 29-CA-13933

December 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The primary issue in this case is whether the Respondent violated Section 8(a)(2) of the Act by recognizing Local 144, NYSNA, Local 721, and Local 3, and applying the terms of the collective-bargaining agreements with the Unions covering employees at its Brooklyn Hospital facility to its previously unrepresented employees at Caledonian Hospital.

On February 24, 1992, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and briefs, the General Counsel filed limited exceptions and a brief in support of the judge's decision, the Parties to the Contract, Local 144 and NYSNA, filed exceptions and briefs, and the Charging Parties filed a brief in support of the judge's decision and in opposition to the exceptions of Local 144 and NYSNA.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings¹ and con-

clusions and to adopt the recommended Order as modified.

AMENDED REMEDY

The judge correctly ordered the abrogation of the collective-bargaining agreements. However, he should have provided that such abrogation shall be without prejudice to the insurance coverage provided in those agreements. See *Hartz Mountain Corp.*, 228 NLRB 492, 563 (1977); *Mego Corp.*, 254 NLRB 300 (1981). Further, to the extent that such coverage was by or through a union plan, we shall order the Respondent to provide an equivalent substitute. See *Hartz* and *Mego*, supra. Finally, we shall order the Respondent to assure that there is no lapse in coverage.

The collective-bargaining agreements at issue contain union-security and dues-checkoff provisions. Therefore, we shall order the Respondent to cease and desist from deducting any union dues, fees, and assessments from the pay of its Caledonian employees pursuant to those provisions in the collective-bargaining agreements with Local 144, NYSNA, and Local 721, and to make whole the employees for any fees, dues, and assessments deducted pursuant to these agreements.

ORDER

The National Labor Relations Board orders that the Respondent, the Brooklyn Hospital Center, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Encouraging membership in Local 144, Hotel, Hospital, Nursing Home and Allied Service Union, Service Employees International Union, AFL-CIO (Local 144), New York State Nurses Association (NYSNA), Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO (Local 721), and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Local 3) and recognizing Local 144, NYSNA, Local 721, and Local 3 as the exclusive collective-bargaining representatives of its employees who are employed at its Caledonian Hospital location.

(b) With respect to its employees employed at its Caledonian Hospital location, applying, maintaining, or giving force and effect to the terms of its collective-bargaining agreements with Local 144, NYSNA, Local 721, and Local 3, which were applied to its employees who were employed at its Caledonian Hospital location on or after November 14, 1988, or to any other contract, understanding, extension, renewal, modification, or superceding agreement, with respect to those employees, unless or until those labor organizations have been duly certified by the Board as the exclusive bar-

¹The judge erroneously states that Local 721 did not participate in the Respondent's hospitalization, medical, dental, optical, life insurance, prescription drug, and disability insurance plans. Local 721 did participate in these plans. We have modified the Order to reflect this factual correction.

gaining representatives of those unit(s) of employees; provided, however, that to the extent consistent with the other terms of this Order, nothing in this Order shall be construed to require the Respondent to vary or abandon any wage increase, or other benefits, terms, and conditions of employment that it has established for those employees in performance of the aforementioned agreements.

(c) Deducting union dues, fees, and assessments from the pay of its employees employed at its Caledonian Hospital location, pursuant to the checkoff provisions in the collective-bargaining agreements of Local 144, NYSNA, and Local 721.

(d) Contributing to joint labor-management trust funds, as a result of the unlawful application of the collective-bargaining agreements with Local 144, NYSNA, and Local 721 at the Caledonian Hospital location.

(e) Permitting Local 3 and Local 144 access to its Caledonian premises for the purpose of engaging in union business during the worktime of the employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 144, NYSNA, Local 721, and Local 3, as the exclusive collective-bargaining representative of its employees who are employed at its Caledonian Hospital location, unless and until those labor organizations have been duly certified by the National Labor Relations Board as the exclusive collective-bargaining representatives of appropriate unit(s) of those employees.

(b) Reimburse its employees at its Caledonian Hospital location for any dues, fees, and assessments and other moneys deducted from their wages on behalf of Local 144, NYSNA, and Local 721 on or after November 14, 1988.

(c) Provide alternative benefits coverage equivalent to the coverage that employees enjoyed under the Unions' plans including pension, medical hospital, prescription drug, dental, optical, life insurance, and other insurance benefits and ensure that there be no lapse in coverage.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payment due under the terms of this Order.

(e) Post at its facilities at the Brooklyn Hospital location and at the Caledonian Hospital location, copies

of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT encourage membership in Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO (Local 144), New York State Nurses Association (NYSNA), Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO (Local 721), or Local Union No. 3, International Brotherhood of Electrical Workers AFL-CIO (Local 3), by recognizing Local 144, NYSNA, Local 721, and Local 3 as the exclusive bargaining representatives of our employees who are employed at our Caledonian Hospital location.

WE WILL NOT apply the terms of our collective-bargaining agreements with Local 144, NYSNA, Local 721, and Local 3, to our employees who are employed at our Caledonian Hospital location on or after November 14, 1988, or any other contract, understanding, extension, renewal, modification, or superceding agreement to our Caledonian employees, unless or until those labor organizations have been duly certified by the National Labor Relations Board as the representatives of those unit employees.

WE WILL NOT deduct union dues, fees, and assessments from the pay of our Caledonian employees pursuant to the checkoff provisions in the collective-bar-

gaining agreements of Local 144, NYSNA, and Local 721.

WE WILL NOT contribute to joint labor-management trust funds as a result of our unlawful application of the collective-bargaining agreements with Local 144, NYSNA, and Local 721 to our Caledonian location.

WE WILL NOT permit access to our Caledonian location by Local 3 and Local 144 for the purpose of engaging in union business during your worktime.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withhold and withdraw all recognition from Local 144, NYSNA, Local 721, and Local 3 as the exclusive collective-bargaining representative of our employees who are employed at our Caledonian Hospital location, unless and until those labor organizations have been duly certified by the National Labor Relations Board as the exclusive collective-bargaining representatives of appropriate units of our Caledonian Hospital employees.

WE WILL reimburse our employees at our Caledonian Hospital location for any dues, fees, and assessments and other moneys deducted from your wages on behalf of Local 144, NYSNA, and Local 721 on or after November 14, 1988.

WE WILL provide you with alternative coverage equivalent to the coverage which you enjoyed under the Unions' plans including pension, medical hospital, prescription drug, dental, optical, life insurance, and other insurance benefits and ensure that there be no lapse in coverage.

THE BROOKLYN HOSPITAL CENTER

David S. Cohen, Esq., for the General Counsel.

Allan H. Weitzman, Samuel M. Kaynard, Peter Robb, and James E. Kellett, Esqs. (Proskauer Rose Goetz & Mendelsohn, Esqs.), of New York, New York, for the Respondent.

Martin Garfinkel and Walter M. Meginniss, Jr. Esqs. (Gladstein, Reif & Meginniss, Esqs.), of New York, New York, for the Charging Parties.

James Wasserman, Esq. (Vladeck, Waldman, Elias & Engelhard, P.C.), of New York, New York, for Local 144.

Richard J. Silber, Esq. (Harder Silber and Bergan, Esqs.), of Albany, New York, for the New York State Nurses Association.

Mitchell Craner, Esq., of New York, New York, for Local 721.

Norman Rothfeld, Esq., of New York, New York, for Local 3.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on charges filed by certain individual charging parties on De-

cember 1, December 30, 1988, and February 22, 1989, in Cases 29-CA-13813, 29-CA-13842, and 29-CA-13933, a consolidated complaint was issued by Region 29 of the National Labor Relations Board on March 30, 1989, against the Brooklyn Hospital-Caledonian Hospital (Respondent).

Essentially, the complaint, as amended at the hearing, alleges that on November 14, 1988, Respondent unlawfully (a) recognized Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO (Local 144), New York State Nurses Association (NYSNA), Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO (Local 721), and Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Local 3) as the representatives of its Caledonian Hospital employees, notwithstanding that those unions did not represent a majority of those employees and (b) applied the collective-bargaining agreements which those unions had for the Brooklyn Hospital employees, to the Caledonian employees.

The complaint also alleges that Respondent violated the Act by permitting Local 144 and Local 3 to meet with Caledonian Hospital employees on Caledonian property during worktime for the purpose of soliciting them to join the unions, and to authorize the deduction of moneys from their wages on behalf of the unions, and for other union business; and by permitting NYSNA to meet with Caledonian employees during such times, for the purpose of conducting a ratification vote with respect to a supplemental collective-bargaining agreement, and for other union business. Finally, the complaint alleges that Sandra Ortega threatened Caledonian employees with discharge if they refused to join Local 144.

Respondent's answer denied the material allegations of the complaint, and set forth the affirmative defense that the Caledonian Hospital employees constituted accretions to the collective-bargaining units represented by the various unions at Brooklyn Hospital.

A 26-day hearing was held before me in New York City. Evidence was received as to the allegations set forth above, and as to another, related complaint, Case 29-CA-13793, involving the discharge of Norman Treyball, and the commission of certain violations of Section 8(a)(1) of the Act.

During the hearing, I granted a motion by General Counsel that, upon the close of the hearing, I sever Case 29-CA-13793 from the rest of the case and issue a decision on that case. Accordingly, on July 12, 1990, I issued a decision in that case in which I held that Respondent violated Section 8(a)(1) of the Act by (a) threatening its employees with discharge in order to discourage them from giving any support and assistance to Local 1199, Drug, Hospital and Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO (Local 1199), and (b) confiscating from its employees' work areas leaflets and other literature which expressed support for Local 1199. I also held that Respondent did not violate the Act by discharging employee Norman Treyball. Thereafter, the Board affirmed my decision. 302 NLRB 785 (1991).

I also granted another motion of General Counsel, to consolidate for hearing the instant proceeding with Case 29-RC-7143, 29-RC-7148, and 29-RC-7150, which are certain representation petitions filed by Local 1199, in which that union seeks certification as the representative for certain units of

Caledonian Hospital employees. Evidence was received concerning the representation cases. Pursuant to the motion, at the close of the hearing, I severed the representation cases from the instant unfair labor practice cases, and remanded the representation cases to the Regional Director for the purpose of forwarding the record to the Board so that it may decide the representation cases. I retained jurisdiction over the unfair labor practice cases, and, pursuant to the motion, stated that I would defer ruling upon those cases, pending a decision by the Board on the representation proceeding. On about January 4, 1990, the Regional Director forwarded the representation cases to the Board.

Thereafter, Respondent moved to reopen the record, and Local 1199 moved to correct the record.¹

On September 12, 1990, the Board issued an Order in which it remanded the matter to me and directed that I first decide the unfair labor practice cases, and rule on the two motions.

On September 18, I granted Respondent's motion to reopen the record, and on October 19, the record was reopened to receive certain evidence pursuant to the motion. The hearing was closed that day.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by General Counsel, the Charging Parties, Respondent, Local 144, and the New York State Nurses Association (NYSNA), I make the following

FINDINGS OF FACT

I. JURISDICTION

At the reopened hearing, evidence was received concerning the change of the name of the Respondent. The parties stipulated that on February 1, 1990, Respondent's board of trustees resolved to amend its certificate of incorporation to rename the corporation "The Brooklyn Hospital Center," and the subsequent amendment of the certificate of incorporation changing the corporation's name was ultimately approved by the Public Health Council and filed with the Department of State on August 1, 1990. On June 29, 1990, the Hospital's Board also approved a new logo and designs for new building and entrance signs which display the new name. The new name of Respondent is reflected in the caption, above.

Respondent, a New York corporation having its principal office and place of business at 10 St. Paul's Place, Brooklyn, New York, has been engaged in the operation of a hospital, providing health care and related services. During the past year, Respondent has derived gross revenues in excess of \$250,000 from its operations, and has also purchased and received at its facility directly from points located outside New York State medical supplies valued in excess of \$50,000. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATIONS

Respondent admits, and I find that Local 144, Local 1199, Local 3, NYSNA, and Local 721 are labor organizations within the meaning of Section 2(5) of the Act.

Respondent denied knowledge or information concerning whether Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 819) is a statutory labor organization. Pete Henriquez, a business agent for Local 819, testified that Local 819 exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work, and that it represents employees with respect to such matters with their employers. It has collective-bargaining agreements with employers, and has been certified by the Board. It also has a constitution and bylaws and maintains an office. I accordingly find and conclude that Local 819 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. Background

a. History of the two hospitals and their merger

This case involves two physically separate hospitals located in Brooklyn, New York, formerly known as Brooklyn Hospital, founded in 1845, and Caledonian Hospital, founded in the early 1900s. They are about 3 miles, and a 10-minute drive from each other.

Each operated continuously and independently until October 1, 1982, when they merged for economic reasons. At the time of the merger, Brooklyn Hospital had about 444 beds and was engaged in tertiary care, operating as a teaching hospital. Caledonian Hospital was a 209-bed acute care hospital. The number of beds in each hospital has not changed materially since that time.

Respondent alleges that the accretion of the Caledonian site employees to the Brooklyn Hospital units was prompted, in part, by the issuance, in 1986, of a letter of tentative non-accreditation to Respondent, after which intensive efforts were made to integrate the two facilities.

General Counsel asserts, however, that at the time of the 1982 merger, much of the integration Respondent relies upon to support the later accretion, had already occurred. It is therefore necessary to examine the status of the hospitals' staffs and administrations upon their merger.

Upon or shortly after the merger, certain services offered by Caledonian, such as inpatient maternity and pediatric services, which were also provided by Brooklyn Hospital, were closed, in order to "maximize the cost effectiveness by centralizing services at Brooklyn Hospital." In addition, according to Respondent president and chief executive officer Frederick D. Alley, at the time of the merger, certain financial services provided at Caledonian were closed in order to centralize them at Brooklyn Hospital, because he wished to "maintain control" of the finances of the hospital. Pursuant to that plan, a corporate department of finance was created at about the time of the merger.

In addition, the merger plan provided for cross-credentialing of physicians. Thus, as soon as practicable after

¹ Errors in the transcript have been noted and corrected.

the merger, physicians' credentials were reviewed, and admitting privileges were extended to physicians at both sites so that they could admit patients at either location. This was designed to enable the hospital to provide better patient care. At the time of the merger, pursuant to the public health law, the separate medical staffs at the two sites were unified. Caledonian Hospital, which then became a teaching hospital, trained residents who rotated from Brooklyn Hospital.

Upon the merger, the staff and management of Caledonian was retained intact by the new corporation.

Upon the merger of the two institutions in 1982, the separate board of trustees of each facility was merged into a single "combined" board of trustees. Alley was appointed as the president and chief executive officer of the merged hospital. A director of corporate planning, and vice presidents for finance and information systems were also appointed. In addition, the medical staffs and medical boards of the two hospitals merged into a single entity. A single chairperson for each medical department was appointed, all of whom were responsible to a physician, the newly appointed vice president for medical affairs.

Respondent's 1982 annual report, issued after the merger of October 1, 1982, stated that the "merger design has sought to maintain administrative independence at each hospital, while providing the maximum in coordination of medical and support services." The report further states that the hospitals are managerially autonomous, with the exception of financial matters.

Reduction of certain costs was met, upon the merger, in part, by the performance, by Brooklyn Hospital, of such services for Caledonian Hospital as data processing, special laboratory studies, CAT scan examinations, and neonatal intensive care; expanded coordination of in-house printing, and a common medical liability insurance program. It was estimated that pooling of hospital resources was expected to save nearly \$3 million in the first 3 years of the merger.

Patients move readily between sites for such specialized testing and treatment which is available at only one of the two sites. Patients have also been transferred between sites. About 30 to 40 patients per day are taken by a contract ambulance service between sites.

b. Union representation and labor relations considerations upon the merger

At the time of the merger, Brooklyn Hospital had collective-bargaining agreements with four unions:

(a) Local 144, which represented about 866 employees in 5 collective-bargaining units, comprising service, clerical, technical, dietary, and social work duties.

(b) NYSNA, which represented about 360 registered nurses.

(c) Local 3, which represented about 40 skilled maintenance persons who worked as engineers, carpenters, and painters.

(d) Local 721, which represented about 50 licensed practical nurses.

Also at the time of the merger, Caledonian Hospital employed about 500 workers in job classifications comparable to those at Brooklyn Hospital who were not represented by any labor organization.

2. Respondent's approach and actions concerning accretion of the two hospitals

Shortly before the merger Respondent's president, Alley, asked its labor counsel for an analysis and opinion of its obligation to the nonunionized Caledonian employees as a result of the merger. On August 31, 1981, Respondent's attorney provided a written opinion. After receiving that letter, Alley asked Respondent's lawyer to "prepare a brief checklist of operational matters that should be considered in an effort to maximize the likelihood of a non-accretion finding between The Brooklyn Hospital and Caledonian Hospital." Accordingly, Respondent's attorney advised by letter dated November 24, 1981, that "particular attention should be directed to the following categories of activities to preserve the present non-union status of Caledonian employees." Specific advice was given to "minimize the possibility of a claim of accretion." Such advice included that employee hiring and firing should be performed separately at each facility; employee schedules, work assignments and discipline should be locally managed; employee relations policy and other labor relations matters should be handled separately by each facility; existing departments and supervisory structures at the two sites should be maintained to the extent possible; supervisors at one facility should not be responsible for the direction of employees at the other; there should be minimal interchange of employees; the nature and frequency of contact between the employees at each site should be minimized; differences in working conditions, job classifications and job descriptions, where they exist, should be maintained; and integration of the two sites should be kept at a minimum.

Respondent's attorney noted that his advice related only to the advice sought, that of maximizing a finding of nonaccretion, and recognized that his suggestions may be "impossible" to carry out, and may, if implemented fully, detract from the anticipated benefits of the merger.

On December 4, 1981, Alley sent a copy of the November 24 letter to the corporate vice president of finance and the executive director of Caledonian Hospital with a note that it related to "steps we can take to avoid accretion by Local 144 following merger. Please carefully review and take necessary steps to avoid problems in your specific areas."

Accordingly, at the time of the merger, Respondent made a policy decision to attempt to avoid accretion. Alley stated that policies were kept separate, there was to be no transfer of personnel, separate staffs were maintained at the two sites, and separate supervisors and managers were maintained, to the degree possible.

Alley testified that certain of his goals in avoiding accretion were to honor the right of the Caledonian employees to decide for themselves whether they wished to be represented by a labor organization, to maintain an unorganized facility in the event of a strike by Brooklyn hospital employees, and to maintain the wages and benefits as they existed at each site.

With respect to self-determination, Respondent's attorney's letter of August 31, 1981 letter noted that the Caledonian employees have expressed a preference to remain nonunion by not supporting or instituting an organizing campaign up to that time.

Indeed, Caledonian employees were the subject of certain National Labor Relations Board proceedings from about the time of the merger, and each time they rejected unionization.

President Alley testified that since the time of the merger in 1982, Peter Ottley, the president of Local 144, had repeatedly asked when he (Alley) would permit Local 144 to represent the Caledonian Hospital employees. Alley's standard reply was that it was not appropriate for Local 144 to represent such employees as that hospital was operating as an independent site, and that he (Alley) would contact him if such representation became appropriate. The last such occasion on which Ottley made that request was in early August 1986, when Richard Garber, Respondent's associate director and director of human resources at both sites wrote to Ottley, telling him that Alley and the Board of Trustees "feel very strongly that the employees make their own decision about unionization."

On September 2, 1986, Local 819 filed a petition in which it sought to represent certain service and maintenance employees employed by Caledonian Hospital. Local 3 and Local 144 were notified of the petition but did not seek to participate therein. Local 1199 intervened, but did not appear on the ballot. It was Respondent's position that any unit found appropriate should be limited to the Caledonian Hospital. In its campaign, directed by Caledonian Hospital Executive Director Jordan, Respondent urged the employees to vote against Local 819. General Counsel argues that Jordan's appeal to the "Caledonian family" on April 7, 1988, constitutes evidence, only 7 months prior to its allegedly unlawful recognition of the unions for the Caledonian employees, that Respondent believed that Caledonian Hospital employees constituted a separate community of interest from Brooklyn Hospital's employees. On April 21, 1988, employees in a unit of service and maintenance and business office clerical employees voted against representation by Local 819, and the results were certified by the Regional Director.

The Board found, in its decision relating to the Treyball discharge, *Brooklyn Hospital*, 302 NLRB 785 (1991), that Respondent became aware that Local 1199 began organizing its employees in September 1988. General Counsel argues that this knowledge, and Respondent's desire to thwart that union's representation of the Caledonian Hospital employees, prompted it to recognize the Brooklyn Hospital unions for its Caledonian Hospital employees in November 1988.

Respondent denies this, and President Alley testified that although he might have been aware of the organizing campaign among the Caledonian Hospital employees in September 1988, such possible knowledge did not play a role in his decision, in November 1988, to recognize the Brooklyn Hospital unions for Respondent's employees employed at Caledonian Hospital.

Rather, according to Alley, he believed that accretion had occurred based on certain circumstances and events, including organizational changes in the operation of the hospital in 1986 and 1987, and thereafter.

One of the major factors, according to Respondent, in the change in the operation of the hospitals, was Respondent's response to action taken by the Joint Commission on Accreditation of Hospitals in and that, due to such changes, by October 1988, Alley believed that accretion of the Caledonian Hospital employees into the Brooklyn Hospital's units had occurred.

In fact, Alley testified that from 1982 until late 1986, he believed that accretion had not occurred. However, between

late 1986 and November 1988, his belief concerning whether an accretion had occurred, changed.

Following an onsite survey of Respondent by the joint commission on Accreditation of Hospitals, that commission wrote to Alley on October 14, 1986, informing him that it had determined to issue a tentative nonaccreditation decision. The document invited Alley to submit a response which would be reviewed by the Accreditation Committee. The committee sent a detailed list of compliance assessment factors, which it had determined that Respondent had not complied with. Certain factors which were set forth in the report, where they related to a lack of central organization, included (a) the lack of an effective, hospitalwide infection control program (b) inadequate nurse direction and staffing, in which the two directors of nursing of the decentralized nursing department/service do not report to the same administrator; inadequate evidence that the directors of nursing have the authority and responsibility to assure that nursing care objectives are established and met (c) an inadequate quality assurance plan and (d) an inadequate general safety program, including an inadequate safety committee—the use of two separate safety committees with no coordination of efforts; a safety director has not been appointed by the chief executive officer—the use of two separate safety directors with no coordination of efforts.

The reaction of Alley to the joint commission's letter was one of "shock." A loss of accreditation would mean loss of Federal funding and reimbursement rights, and the end to the viability of Respondent. Alley's response to the joint commission's letter on October 30, 1986 contained its evidence of compliance with the factors found inadequate by the commission. The response noted that Respondent established its separate structure, including a separate supervisory structure upon the merger, upon advice of counsel, in order to honor employee self determination and avoid the accretion of the Caledonian Hospital employees into the Brooklyn Hospital units. The response added that "in the face of your current recommendations, this structure can be changed." Respondent also noted that it has certain common corporate policies and procedures.

One of Respondent's specific responses was to the fact that the two directors of nursing do not report to the same administrator. Respondent's response noted that separate supervision was implemented upon its attorney's advice in order to avoid accretion and the extra costs of unionization. The response added that a corporate director of nursing for Respondent would be designated by December 1, 1986, and that "we hope and think we can accomplish this without union accretion at this time." Alley's explanation of this at hearing was that he believed that the appointment of a corporate director of nursing as a "titular head" of the corporate nursing department would satisfy the joint commission and preserve Respondent's nonaccretion position. However, according to Alley, as further changes took place, he recognized that he was violating his attorney's August 1981 advice to maintain a separation of functions between the sites, and his belief that nonaccretion could be maintained, also changed.

Following Respondent's submission of its response and a meeting with joint commission staff, Respondent received accreditation, retroactive to 1986.

Alley further testified that Respondent's direction and overall effort was to begin to standardize policies, procedures and job descriptions so that its programs could become fully integrated and operate similarly at both sites. Notwithstanding this, and other organizational changes made at that time, Alley and Respondent were still operating under the principle of nonaccretion and separate units.

It is not disputed that Respondent continued this policy of accretion avoidance for several years.

In October 1988, Alley was of the belief that at that time Respondent was, in fact, operating a hospital at which accretion had occurred, and could not successfully defend an argument by Local 144 that accretion had occurred. He discussed these matters with Vice President for Corporate Administration Ott in early October 1988, and with finance official Mandler prior to meeting with Local 144 on October 26, 1988. They reviewed certain changes made in the hospital's structure and operation and concluded that the principles of accretion avoidance, which Alley had attempted to adhere to, had been violated.

Accordingly, Alley told his attorney that the hospital's operations had changed substantially and were continuing to change, and directed him to arrange a meeting with Local 144. Just prior to the meeting, Alley had decided that if Local 144 was interested in recognition for the Caledonian Hospital employees, then he would recognize Local 144 and the other Brooklyn Hospital unions for the Caledonian Hospital employees.

3. The recognition of the Brooklyn Hospital unions and the application of their contracts to the Caledonian Hospital employees

At a meeting on October 26, 1988, Alley told Local 144 representatives that he was meeting with them to discuss the possibility of Local 144 representing the Caledonian Hospital employees. Alley told them that there were common job descriptions at both hospitals, and that he had been integrating the payroll systems and management, and that he believed that he could have a "businesslike" relationship with that union. Alley then asked the Local 144 representatives if they were still interested in representing the Caledonian employees, and they said they were. Alley told them that there were certain issues that Respondent still had to consider, such as how many employees were involved and how recognition would affect the wages and benefits of the Caledonian employees. Alley concluded by saying that Respondent would call them after that had been done.

Alley then met again with Ott and Mandler. Alley told them of his meeting and asked Ott to prepare information concerning the bargaining units involved. Alley told Ott that any recognition accorded to the Brooklyn Hospital unions should be corporatewide, and involve the other unions which represented the Brooklyn Hospital units. Alley asked Ott to look into the matter and report to him the ramifications of corporatewide recognition, including the costs.

Corporate Human Resources Director Thomas Grosso testified that in early or mid-October 1988, Ott asked him to find out whether the other Brooklyn Hospital unions, NYSNA, Local 721 and Local 3, wished to represent the Caledonian Hospital employees. He instructed Myrna Branker to contact those unions. Thereafter, during the week of November 7, 1988, Ott directed Grosso to tell the three

unions that he needed a letter requesting recognition. Grosso again told Branker to contact them. Local 144's written request for recognition was received by Respondent on November 9, 1988, and accepted on November 11. The letter noted that since the merger of the two hospitals, their operations have increasingly become centralized, and that a "shared community of interest" now exists between the employees at both sites. As of November 11, a reply had not been received from the three other unions, and on that day Grosso phoned the three unions and requested a letter. Frank Montemagno, the business representative for Local 3, testified that Grosso told him that the two hospitals had become integrated and that an accretion had occurred, and asked if Local 3 was interested in representing the Caledonian Hospital engineering department employees. On that day, an oral agreement was reached between NYSNA and Grosso that Respondent would recognize it. The written request for recognition sent by NYSNA was received on November 15.

On October 31, 1988, Ott sent a memo to the corporate directors of nursing, human resources, facilities & construction and safety, professional services, and operations, directing them to submit, by November 4, their written assessment and list of initiatives to comply with the joint commission standards for the summer 1989 inspection. Ott's memo discussed the need for the writers to note the initiatives, expected date of implementation, and their purpose and impact on the budget, of various items specified by the joint commission in 1987. The memo stressed the importance of coordination and integration of hospital services and uniformity of performance standards and methods between the two sites, and standardization of training, and procedures. With respect to the human resources department, the memo stated that "common standards and practice concerning staff recruitment, hiring, orientation, continuing education, and periodic evaluation and annual health assessment must be completed as soon as possible so that we have an implementation history to show at the point of our next [joint commission] survey. This is particularly important in light of recent revisions to part 405 of the state hospital code. Thomas Grosso is responsible for development of a work plan which will bring about the standardization of policy and practice in this area." When asked why such a short response time was given, Ott replied that Alley had asked him to brief him on their readiness for the joint commission survey, and for his (Ott's) opinion on what had to be done to meet the "accretion argument" of the unions.

On November 14, 1988, Respondent received written requests for recognition from Local 3 and Local 721. The demands were accepted.

On November 14, 1988, the date conceded as the date that Respondent recognized the Brooklyn Hospital unions for the Caledonian Hospital employees, Grosso issued a memo to all Caledonian Hospital employees as follows:

During the past year many of you have surely noticed that the Corporation has taken extensive steps to make the Brooklyn Hospital Division and the Caledonian Hospital Division function as one unit. We have now entered the final phases of that project.

Because of this, the various unions that represent the employees at The Brooklyn Hospital have demanded recognition and that the contracts at The Brooklyn Hos-

pital be applied to the corresponding employees at Caledonian Hospital because, by law, the employees at Caledonian Hospital are an accretion to the Brooklyn Hospital bargaining units.

In light of the fact that the unions are legally correct and inasmuch as the existence of uniform wages, hours, and working conditions at both locations is consistent with the Corporation's desire to function as one hospital, we have agreed to the unions' demands.

Therefore, all Caledonian Hospital employees whose classifications are covered by a collective bargaining agreement at The Brooklyn Hospital are now covered by the same collective bargaining agreement.

We will conduct special meetings beginning next week to explain in detail what effect the application of the existing collective bargaining agreements will have on you.

Respondent immediately applied its collective-bargaining agreements with the Brooklyn Hospital unions, Local 144, NYSNA, Local 721, and Local 3, to the employees in comparable bargaining units at Caledonian Hospital. Although each contract contains union-security clauses, the unions have not sought to enforce the clauses.

At the time of recognition of the four unions, no evidence of majority status was requested by Respondent, and none was offered by those unions.

Local 144 represented a numerically larger number of employees at Brooklyn Hospital than employed in similar positions at Caledonian Hospital. NYSNA represented about 360 registered nurses at Brooklyn Hospital, compared with about 115 at Caledonian Hospital. Local 3 represented about 40 skilled maintenance employees at Brooklyn Hospital, compared to 15 at Caledonian Hospital. Local 721 represented about 50 licensed practical nurses at Brooklyn Hospital compared with about 58 at Caledonian Hospital.

Alley conceded that at the time he decided to grant recognition to the unions, he was aware that some of the programs between the hospitals had not been fully integrated, or that some departments did not have common supervision. However, he knew what was being planned for the future and what changes would occur, and his goal was that of "one master hospital" with staff moving back and forth, depending upon workloads and changes in volume.

Thereafter, on November 23, 1988, a meeting of the hospital council was held. General Counsel argues that the minutes of that meeting establishes that accretion had not yet occurred, and that, for the first time following recognition, Respondent then structured a program to support, after the fact, its decision to recognize the Brooklyn Hospital unions.

The minutes state as follows:

Accretion Requests—The Hospital Corporation has agreed to union demands to accrete the employees into the same categories at the Caledonian Division. As has been discussed before technically they have us "dead to rights." F.D. Alley has officially acquiesced to these demands. Mr. Ott is very optimistic. Inter-use of employees in each division is to be encouraged at the rank and file level of employees e.g. Dietary, Nursing and Engineering. This is the time to do it. . . .

Mr. Alley, Mr. Ott, Mr. Mandler, Mr. Pucio, Ms. Harrington, Mr. Grosso and Ms. Stoddard have been

actively pursuing new initiatives. As of Nov. 14, 1988 the same union at the TBH Division is now at the Caledonian Division as the process of accretion continues. Mr. Grosso asked Administrators to stress to Dept. Heads that employees in all four bargaining units be utilized at both divisions. Dept. Heads should come up with a plan of accretion and documentation of same. Local 144 personnel get salary increases Dec. 1, 1988. The increases are 4%. This increase is "a matter of law" and not a ploy of the corporation at this particular time. 1199 is telling people not to join 144. Caledonian Hospital is now a "union shop" and personnel are informed that within 30 days of employment the person must become a member of the union or they cannot work at that job site. Again Mr. Ott and Mr. Grosso stressed the importance of utilization of employees at both hospital sites e.g. emergency coverage, float teams, etc. The principle we must remember is "one unit or community of interest."

Corporate official Ott testified that, until that Hospital Council meeting, there was, at the level of department head, a standing directive to avoid interdivisional use of employees, in order to avoid accretion. He further stated that, at the level of administrator, they all were faced with the "dilemma" of trying to integrate and not integrate functions at the same time.

4. Facts relating to the operations of the hospital—its two sites and employees

Geographic proximity

As set forth above, the two hospital sites are about 3 miles, and a 10 minute drive from each other. Respondent's vans transport supplies and staff between locations when necessary. An outside vendor, Aaron Ambulance, transports patients between the sites, for example, when a certain test is needed for a Caledonian Hospital patient, he will be taken to Brooklyn Hospital for the test. Similarly, patients admitted at Brooklyn Hospital are sometimes transferred to Caledonian Hospital, and are admitted there. Admitted Caledonian Hospital patients are also transferred to Brooklyn Hospital and admitted there.

Similarity of skills and functions

Employees performing certain job duties at each hospital possess the same general skills and perform their jobs similarly regardless of which site they are located in. Thus, for example, registered nurses perform their nursing duties in a similar manner, whether at Caledonian Hospital or Brooklyn Hospital. However, an exception exists in the engineering department, which includes the skilled maintenance employees. Separate engineering departments are located at the two hospital sites. Juergen Luebker, the corporate director of facilities and construction management, testified that, overall, the Caledonian Hospital employees have fewer trade skills than the Brooklyn Hospital engineering employees. Whereas, the Brooklyn Hospital engineering department employees perform such work as electrical, carpentry, and plumbing work for the Brooklyn Hospital site, the same types of work, needed to be performed at Caledonian Hospital, would be contracted out and not performed by the Caledonian Hospital en-

gineering employees. There are specialized tools at Brooklyn Hospital, such as a pipe threader, welding machine and electrical testing equipment, used by skilled workers. Luebker stated that the Caledonian engineering department employees do not possess such specialized skills.

Thomas Grosso, the corporate director of human services, testified that he was in charge of a project, which began in 1987, pursuant to which uniform criteria based job descriptions for all positions in the hospital would be prepared. Such job descriptions state the main functions identified with the position involved, and also state how those functions will be evaluated in order to determine whether the individual meets or exceeds those requirements. Grosso stated that the project was completed by November 14, 1988, the date of recognition of the Brooklyn Hospital unions for the Caledonian employees. Respondent argues that such standardized job descriptions are evidence of uniformity of skills and functions between the two sites, and according to president Alley, they provide for uniform monitoring and audit of how specific functions and jobs are performed.

However, the current descriptions are written for the separate positions at the two sites, describing the separate positions. The uniform criteria based job descriptions used for the Brooklyn Hospital positions were "without question" the classic criteria based job descriptions, having two columns listing "responsibilities" and "performance is satisfactory when" which lists acceptable actions. However, the Caledonian descriptions simply list the duties and responsibilities for the position, as for example, the positions of recovery room registered nurse at Caledonian Hospital compared with the critical care unit registered nurse at Brooklyn Hospital. In this connection, the testimony of Bridget Keenan, the Caledonian Hospital director of nursing, that the Caledonian Hospital nursing department adopted, in January 1989, the uniform criteria based job descriptions used at Brooklyn Hospital, and that prior thereto the Caledonian Hospital job descriptions were "separate," is inconsistent with that of Grosso, who testified that the two differently written job descriptions in the nursing department, set forth above, were at the time of the hearing the "current" job descriptions.

As a rule, regarding Caledonian Hospital, prior to November 14, 1988, the job descriptions for bargaining unit positions were prepared and signed by the supervisor or the department head of the department in which the employee is employed, and also signed by the human resources director for Caledonian Hospital.

In addition, the job descriptions are written by various supervisors and department heads, separately, at each site, and approved, in the case of Caledonian Hospital by William Myhre, the manager of human resources at that site, and for Brooklyn Hospital by Grosso or his subordinate who is employed at the Brooklyn Hospital location.

Similarity of conditions of employment

As set forth above, prior to the recognition of the Brooklyn Hospital unions for the Caledonian employees, the Caledonian employees were not members of any labor organization, and accordingly, their wages, hours, and other terms of employment were set at Respondent's discretion. On the other hand, the Brooklyn Hospital employees were represented by the four unions involved here. Collective-bar-

gaining agreements set forth the terms and conditions of the Brooklyn Hospital unit employees.

The wages for comparable positions at the two locations prior to November 14, 1988 were different, although essentially comparable. Caledonian Hospital employees, received wages and benefits at the discretion of Respondent. For example, in May 1984, Caledonian Hospital Executive Director James Jordan announced improvements in benefits for various classifications of Caledonian employees. Such improvements included increases in vacation days, increased uniform allowances for those employees eligible to receive such an allowance, one additional paid holiday, an increase in shift differentials for registered nurses and licensed practical nurses, time-and-a-half pay for legal holidays, longevity increases for most technical, professional and ancillary employees, and for registered nurses, shift differential, education differential and certification differential. Virtually all those improvements were in effect on November 14, 1988, the date of recognition of the Brooklyn Hospital unions. It should be noted that Grosso first testified that certain Caledonian Hospital improvements were in effect as of November 14, 1988. However, he later testified that they, as well as others, had been superseded by corporate policy or practice before that date. With reference to that, he testified that certain corporate policies, dated February 1, 1989, were effective November 14, 1988. That testimony cannot be accepted, especially in view of his earlier statement that the 1984 Caledonian Hospital policies were in effect on November 14, 1988.

Policies concerning tuition reimbursement were different for the two sites. Employees represented by Local 144 at Brooklyn Hospital were not eligible for tuition reimbursement. Other full-time Brooklyn Hospital employees were eligible, to the extent not inconsistent with the collective-bargaining agreements covering them. Caledonian Hospital employees were eligible pursuant to a policy dated June 1983. However, Grosso testified that that policy was orally changed in mid-1988, but could provide no details of the change or the persons affected. It should be noted, however, that both programs provided for 100-percent refund of tuition, although the Caledonian program spreads the refund over a period of time.

Payment for overtime was essentially the same for employees at both sites. Until late 1988, Caledonian Hospital employees were reimbursed for all sick time up to a maximum of 120 accrued sick days upon the employee's reaching normal retirement age. The same policy did not apply to Brooklyn Hospital employees, who were entitled to receive all their unused sick time pay or part thereof upon their separation from that hospital. Under the Brooklyn Hospital policy, some employees received 100 percent of unused sick time.

Regarding hospitalization, pension, and retirement, of the Brooklyn Hospital unions, only Local 3 participated in Respondent's hospital, pension and retirement plans. The other unions did not. The Caledonian Hospital employees were also covered, until the end of 1988, by the hospital's own insurance plan. Beginning in January 1989, Respondent began contributing to the health and welfare benefit funds of Local 144, NYSNA, and Local 721 in behalf of its employees represented by those unions. Through the end of 1988, Respondent provided dental benefits for the Caledonian Hos-

pital employees, and their families were covered by Respondent's contribution during that time.

Respondent offers tax deferred annuity plans to employees. As of November 14, 1988, there were five such plans offered to employees assigned to Brooklyn Hospital, and two were offered to Caledonian Hospital employees.

As of late 1988, Respondent provided life insurance to all eligible employees of Caledonian Hospital equal to the amount of their salary. Those Brooklyn Hospital employees who participated in Respondent's hospital plan, specifically the employees represented by Local 3, received this life insurance benefit. The Brooklyn Hospital employees represented by NYSNA, Local 721 and Local 144 were not provided any hospital life insurance. Subsequent to the application of Local 3's Brooklyn Hospital contract to the Caledonian Hospital employees, only those Caledonian Hospital employees covered by the Local 3 contract receive the hospital's life insurance benefit.

Caledonian Hospital's policy concerning probationary periods for its employees differed from that for the Brooklyn Hospital employees, who were covered by collective-bargaining agreements. The probationary period for full-time Caledonian employees was 3 months for full-time employees, and 4 months for part-time workers.

Timeclocks were in use at Brooklyn Hospital, which the unit employees were required to use. In contrast, Caledonian Hospital employees' time records were kept by their supervisors. A timeclock was installed at Caledonian Hospital after November 14, 1988. However, it should be noted that the Caledonian timeclocks were ordered in the summer of 1988. Prior to May 1989, Brooklyn Hospital employees wore uniforms with an emblem stating "Brooklyn Hospital," and Caledonian employees' uniform emblem stated "Caledonian Hospital." Beginning in May 1989, one standard uniform emblem was used. As of November 14, 1988, and at the time of the hearing, it was Respondent's policy to make separate awards for the employee of the month and employee of the year, to employees of Caledonian and Brooklyn Hospitals. In December 1988, a separate Christmas party was held at Caledonian Hospital for the Caledonian employees.

With respect to the nurses, during nurses recognition week, which began in 1987 or 1988, Caledonian Hospital nurses select the "outstanding nurses" for that hospital, as to which the Brooklyn Hospital nurses have no input. Similarly, Brooklyn Hospital nurses select the "outstanding nurses" at Brooklyn Hospital with no input from the Caledonian nurses. During nurses recognition week, speakers address the nurses at the separate sites. The only joint activity that week is the awards ceremony.

After November 14, 1988, when Respondent applied its collective-bargaining agreements with the Brooklyn Hospital unions to the Caledonian employees, the wages, benefits, and other terms and conditions of employment as set forth in the agreements have been identical regardless of which site the employee is employed at. In addition, the hours of work for the employees since that time have been the same.

Centralization of administration, managerial, and supervisory control

As set forth above, Respondent, upon the merger, had one board of trustees, and one president and chief executive officer. In addition, as of September 4, 1987, it had several cor-

porate directors, including a vice president for finance; the director for corporate planning and facility development who was responsible for the engineering function at both sites; a corporate director of human resources; a corporate director of materials management who oversaw the assistant directors of materials management at both locations. Each assistant director was responsible for different areas. For example, the assistant director at Brooklyn Hospital was in charge of purchasing, stores and receiving, and printing and duplication, while the assistant director at Caledonian Hospital was responsible for central supply, purchasing, stores and receiving, the EKG technicians, and the mailroom. The corporate director of human services was responsible for the director of human resources at Brooklyn Hospital, labor relations functions, and the manager of human resources at Caledonian Hospital. The corporate director of nursing services was responsible for the separate directors of nursing at the two sites. Each had assistant directors reporting to the directors of nursing. A corporate director of food services, Rosario Aguirre, was appointed in August 1988.

In February 1987, a corporate director of professional services, Wayne Keathley, was appointed. He also reports to Vice President for Administration Ott. He is responsible mainly for compliance and regulatory matters. He is also in overall charge of the census management and physician services area, medical records and concurrent review and social work services.

In April 1988, a corporate benefits manager was appointed. Prior to that time, there were separate benefits billings for the two sites. Upon the appointment of the corporate benefits manager, although there has been no change in the actual benefits themselves, the way the benefits are processed is the same between the two locations.

In May 1988, Nancy Stoddard was appointed as the corporate director of nursing for special projects. She is in charge of the quality assurance and infection control program and also regulatory compliance. She is involved with the standardization of policies and procedures in the nursing department, which became one policy in July 1988.

A corporate director of operations, Frank Goldstein, was appointed in about February 1989. Prior to that time, there were separate directors of operations for Brooklyn Hospital and Caledonian Hospital. He also reports to Ott. A corporate director of food services, Rosario Aguirre, was appointed in August 1988.

A management council, comprised of corporate directors such as Grosso, Keathley, Luebker, Ott, and others, was begun in September 1987.

The management group, comprised of the department heads of both locations, have held group meetings since June 1988. At the meetings, the individuals discuss labor relations, finance, policy and procedure, and safety matters. Prior to June 1988, separate meetings of the department heads were held at each location.

Until the recognition of the Brooklyn Hospital unions for the Caledonian Hospital unit employees, there were separate payrolls for each site, and different starting and ending dates for payroll periods for the two sites. But even before November 14, 1988, there was a biweekly payroll pay period regardless of site.

Thomas Grosso became corporate director of human services in charge of administration in June 1987. A couple of

months before his appointment Grosso was told by David Ott, the corporate vice president for administration, that his position was created in order to bring about a "total integration" of all human resource functions. Ott sought to have all human resource functions, such as policies and procedures, hiring, training, orientation, job descriptions, evaluations, time and leave records, methods of operation, integrated in order to have the human resource area function under one corporate "umbrella." Ott told Grosso that the reason for this change was the joint commission mandate which required the unification of methods of doing business. Grosso later testified that he did not know if the joint commission required one system for hiring, adding that one hiring system was not implemented until after November 14 1988.

Grosso testified that as of November 14, 1988, William Myhre, the director of human resources at Caledonian Hospital, was his representative at that site, and he (Grosso) gave Myhre instructions as to the performance of his duties. However, in early 1989, Myhre was assigned by Grosso to spend more time at Brooklyn Hospital in order to ensure that the human resources department was prepared for the reinspection by the joint commission. Charles Moore, a labor relations assistant, was therefor assigned to Caledonian Hospital, and he spent at least 75 percent of his time there.

Grosso stated that he visited Caledonian Hospital three to four times per week, but his visits varied. When there, he met with department heads and supervisors, and the human resource staff assigned there.

Regarding recruitment, all recruitment of Brooklyn Hospital's bargaining unit positions was done from the Brooklyn Hospital human resources department, and all hiring of unit personnel in that hospital was done by Brooklyn Hospital's supervisors and managers at least until the end of 1988.

Prior to November 14, 1988, the posting of available positions at Caledonian Hospital was done at Caledonian only. Similarly, at that time, posting of vacant positions at Brooklyn Hospital was done at Brooklyn Hospital only.

Upon the recognition of the Brooklyn Hospital unions for the Caledonian employees in November 1988, those bargaining unit positions which were vacant were posted at both sites simultaneously. In selecting a current employee for the position, which for example was at Brooklyn Hospital, no preference was given to a current Brooklyn Hospital employee over a worker who was employed at Caledonian Hospital. Seniority, hospitalwide, would prevail regardless of which site the employee involved was employed at. The seniority lists of both sites were combined and dovetailed after the recognition of the Brooklyn Hospital unions for the Caledonian employees. Outside advertising, however, for positions at both hospitals was done through one office even before November 1988.

New employees receive orientation and on-the-job training concerning their job functions from their supervisor at the site at which they are assigned. However, the corporate human resources department briefs them on their benefits, pay days, and use of timecards.

Grosso further testified that since January 1989, the corporate human resources department recruits and screens applicants for all nonnursing positions at Brooklyn Hospital and Caledonian Hospital. The planning for this corporate hiring structure began "many months" before January 1989. Once it is determined that the applicant meets the minimum

qualifications for the position, all such applications passing the screening process are sent to the site where the vacancy exists. Then, the supervisors and managers at Brooklyn Hospital or Caledonian Hospital select the candidate. The ultimate hiring decision remains with the department manager at the particular site.

Hiring for registered nurses and licensed practices nurses is done by the corporate nursing resources office rather than the corporate human resources department headed by Grosso, because the nursing resources office is more qualified to assess the clinical skills of nursing applicants. Bridget Keenan, the director of nursing at Caledonian Hospital, testified that before January 1989, the recruiting and screening function for Caledonian Hospital's nurse applicants was done by Caledonian Hospital nursing supervisors in cooperation with the human resources department. As to the registered nurses and licensed practical nurses, such hiring was done by nursing department supervisors exclusively. After January 1989, the recruitment of nurses has been done by corporate nurse recruiter Donna Jermott who recruits nurses by advertising, word of mouth and by means of nurses approaching the hospital who have not been solicited by it. The procedure followed once an applicant is found, is that Jermott administers a preliminary test to the applicant and checks her credentials. Jermott then notifies the assistant director of nursing and the assistant nursing care coordinator in the area of the hospital seeking the nurse, regardless of the site involved. An interview is then arranged with those persons. The nursing care coordinator and the assistant director of nursing at the particular site then makes the decision as to whether the applicant should be hired.

Grosso testified that until about late December 1988, the entire hiring process for Caledonian Hospital employees took place at the Caledonian personnel office, and at that hospital's departments. Such process included the screening of applicants, their interview, and decisions as to whether the applicant should be hired. Decisions on hiring were made by Caledonian Hospital's supervisors and managers. Nicholas Costello, the Caledonian personnel director until November 1987 and his successor, William Myhre, the Caledonian manager of human resources, were responsible for the human resource function at Caledonian Hospital. Until November 1988, Myhre spent more worktime at Caledonian Hospital than at Brooklyn Hospital. He was responsible for signing personnel documents for Caledonian employees, such as payroll change notices. He was not responsible for signing such forms for Brooklyn Hospital employees until November 1988. Grosso stated that Myhre has reviewed the job descriptions for Caledonian employees, and has signed his approval for such descriptions, pursuant to the authority given him by Grosso.

Similarly, Caledonian Hospital disciplinary notices prior to November 14, 1988, were issued by a department head at Caledonian Hospital, and signed by Nicholas Costello, the director of human services for Caledonian Hospital, or his successor, William Myhre.

Grosso stated that prior to June 1987, when he became corporate director of human services, discipline of Caledonian Hospital employees was handled by the Caledonian human resources staff, headed by Nicholas Costello, who did not consult with Grosso or anyone else at Brooklyn Hospital regarding disciplinary matters. However, from June 1987 to

November 14, 1988, suspensions and discharges were subject to the approval of the corporate office, specifically Grosso, or his assistant, Myrna Branker. However, the Caledonian human resources department performed the investigatory work, and the department head made a recommendation and discussed the matter, but it was the corporate human resources department which then gave instructions as to whether, how and when to proceed. Grosso noted that the corporate human resource department's approval of such disciplinary action was not put in writing, and there is nothing on the disciplinary form requiring express written approval of the corporate department. In fact, the department head and supervisor at Caledonian Hospital sign the disciplinary document. In cases of a serious offense or when no corporate human resource individual was available, however, the department head may take disciplinary action immediately, pending an investigation.

Grosso noted a situation in which he overruled a department head's recommendation to discharge an employee who wore a large button which obscured her identification badge. On that occasion he spoke to the department head and William Myhre. In addition, in January 1988, he was advised by Bridget Keenan, the associate director of nursing at Caledonian Hospital, of an altercation between two nurses at that site. He directed that an investigation be conducted, after which he directed one nurse's discharge. Grosso stated that he was not aware of any involvement of Corporate Director of Nursing Harrington in that matter.

Grosso stated that other than a leave of absence policy and a policy concerning an employee's date of termination, he was not aware of any corporate human resources policy that was put in writing and disseminated on or before November 14, 1988.

Grosso stated that even currently, performance evaluations for Caledonian Hospital employees are done by the supervisor and the department head at Caledonian, but may be reviewed by a higher authority. The performance evaluations are reviewed by the human resource department when the employee seeks a promotion or transfer. A computer selects those employees whose evaluations are due, and requests that evaluations be performed, and are sent to both sites. The personnel files of Caledonian employees are maintained at Caledonian Hospital. Grosso further stated that the hours of work assigned to Caledonian employees are assigned to such workers by their supervisors or the department heads at Caledonian Hospital, and their work assignments are given to them by the department head assigned to Caledonian.

With respect to the supervision of the approximately 258 employees in the Caledonian Hospital nursing department, Keenan testified that she has two assistant directors of nursing who report to her. Two nursing supervisors are on duty at night. There is also one nursing care coordinator for each of the medical-surgical units in the department. The nursing care coordinator is in charge of all the nursing employees working on the unit. There are also assistant nursing care coordinators who work primarily at night. They direct the work of the nursing staff on their unit, and have authority to issue warning notices. The assistant nursing care coordinators report to the nursing care coordinators. Keenan stated flatly that the nursing employees are under the supervision of herself, the assistant directors of nursing, the nursing care coordinators, the assistant nursing care coordinators, and the

nursing supervisors. It should be noted that she also stated that prior to November 14, 1988, she consulted with corporate director of nursing Harrington concerning warning notices. However, when shown certain disciplinary notices, she could not recall if she discussed particular notices with Harrington, and instead testified that when apprised by her assistant director of nursing and nursing care coordinator of misconduct by a nursing employee she (Keenan) recommended disciplinary action and relayed her recommendation to her supervisors, and Keenan then spoke to the employee. In fact, Harrington testified that discipline given to Caledonian nursing staff is issued by Caledonian Hospital nursing supervisors, although one incident related by Harrington involved a situation in January 1988, where Caledonian assistant director of nursing Mitchell told her that she (Mitchell) was recommending termination for a nurse who assaulted her supervisor. Harrington told Mitchell to consult with Human Resources Director Grosso. Harrington has also, from time to time since her appointment as corporate director of nursing, been advised of the warnings of nurses by Caledonian nursing supervisors.

One particular incident involved a serious medication error, which because of its nature was brought to the attention of the corporate quality assurance committee. However, not all disciplinary action is brought to that committee. On other occasions when Keenan was on vacation, Mitchell administered a warning to an employee. In fact, written warnings dated prior to November 14, 1988, bear the signatures of the supervisor and Keenan as the department head.

Margaret Harrington, the corporate director of nursing, testified that Keenan supervises the day-to-day operations at Caledonian Hospital. She further stated that performance evaluations of those nurses are performed by the nursing supervisors at Caledonian Hospital, and similarly, evaluations of Brooklyn Hospital nurses are done by supervisors at Brooklyn Hospital. Work schedules, and the hours and days of work to be assigned to specific nurses, are determined by the Caledonian supervisory nurses, who also grant routine requests for time off for vacations and sick leave.

When additional nurses are needed for overtime, for example, Keenan hires per diem nurses from a list in her office. That list is maintained for Caledonian Hospital only. Brooklyn Hospital's requirements for overtime help are met by its "float team"—which consists of Brooklyn Hospital nurses available for duty. Only when the float team has been fully utilized, will an outside agency or per diem nurses be used for overtime at Brooklyn Hospital.

Harrington further testified that even in January 1989, the practice was for Keenan to handle routine disciplinary matters, including the termination of nonnursing staff. If the matter was "clear cut," Harrington had no objection to Keenan handling the situation in consultation with the personnel department. Keenan stated that she never terminated a nurse without checking with Harrington first. Although the assistant nursing care coordinator initiates a warning notice, before that notice is issued, the nursing care coordinator, Keenan, and Harrington, and the human resource department are involved in the matter.

Joint meetings have been held among the nursing care coordinator, the assistant directors of nursing and the director of nursing since January 1988, at which common problems

are discussed. Since 1989, weekly operations meetings have been held with assistant directors of nursing from both sites.

Elaine Shimono was appointed the corporate director for nursing education in January 1988. She is responsible for planning, directing, and implementing nursing educational programs at both sites. Such programs are the same at both locations. She has an office at Brooklyn Hospital, but travels to Caledonian Hospital when needed. Each site has its own nursing instructors who teach the same classes at each site, and also teach at the other site. Prior to November 1988, voluntary workshops were held for nurses dealing with such topics as trauma, neurologically ill patients, care of AIDS patients, and documentation. Nurses at both sites attended the workshops. In January 1989, a joint orientation for new nurses was begun, but plans were instituted for such program before November 1988. An in-service instructor for Caledonian Hospital conducts training for Caledonian nurses, but she is consulted if there is a problem with a Brooklyn Hospital nurse. If the nursing education coordinator believes that a Caledonian nurse, for example, is seriously deficient, she speaks to Shimono, who speaks with the assistant director of nursing, or with Bridget Keenan, the director of nursing for Caledonian Hospital.

Juergen Luebker, the corporate director of facilities and construction management, and corporate director of safety, has held the position of corporate director of facilities and construction management since 1983. He is in overall charge of the engineering departments at both sites. There are separate directors of engineering employed at the Brooklyn Hospital and at the Caledonian Hospital locations, both of whom report to Luebker. At Caledonian Hospital, two supervisors report to the director of engineering there. They supervise the 15 employees employed there, including a plumber, electricians, maintenance men, firemen, stationery engineers, and painter. The two supervisors, Andrew Ford and Victor Sarkissian, assign work to the employees and have authority to warn and reprimand the workers.

Luebker's philosophy is that he should not intercede with the two directors regarding their day-to-day supervision of employees under their command. However, on rare occasions he will supervise the employees himself, as set forth below. Luebker stated that the day-to-day supervision of the engineering department employees at Caledonian Hospital is performed by director of engineering Barry Frankenstein, and his two supervisors. Neither director of engineering is responsible for any engineering employees employed at the other site. Frankenstein signs the performance evaluations for the Caledonian employees, but he usually discusses them with Luebker before he gives them to the employees. Frankenstein determines the break and lunch times for the workers consistent with Luebker's general instructions, given in 1985, that there were too many breaks. Before November 14, 1988, Luebker interviewed the applicants as did the director of engineering at the respective site. After November 14, 1988, the human resources department prescreens the applicant, who is then sent to the site where a vacancy exists, for an interview. For a vacancy at Caledonian, for example, the individual is interviewed by Frankenstein. Frankenstein makes a recommendation which Luebker can accept or reject, with the concurrence of the human resources department. However, Luebker has never disagreed with Frankenstein's recommendations.

Prior to November 14, 1988, and at the time of the hearing, Frankenstein schedules the hours of work of the Caledonian Hospital engineering department employees, and he and his supervisors distribute the work assignments to the various employees in the department. The same procedure is followed at Brooklyn Hospital where director of engineering Tatum performs the same duties and also makes work assignments to the 45 engineering department employees based upon any priority jobs given them by Luebker.

Frankenstein initiates all the discipline imposed upon the Caledonian engineering department employees. He issues written warning notices to the employees under his supervision, but consults with the human resources department and Luebker. However, discharge notices are issued by the personnel department. The disciplinary action notice bears the department head's signature—Frankenstein or Tatum. Luebker stated that he never overruled Frankenstein as to disciplinary action taken against Caledonian engineering employees, but later testified that he overruled Frankenstein regarding discipline only once, and that incident occurred in 1989. However, he has overruled Tatum. Luebker has been consulted on each occasion prior to the issuance of a written warning or written disciplinary action such as suspension or termination, and in fact regarding terminations, Luebker looks into the situation, learning the disciplinary history of the employee, and consults with the human resources department. But it is Frankenstein who meets with the employee involved, not Luebker, and it is the specific director of engineering who takes the action needed. Luebker overruled Tatum when Tatum sought to immediately suspend an employee, because Luebker did not believe that proper procedural steps had been taken to suspend the worker. He also disapproved Caledonian supervisor Ford's desire to suspend or issue a written warning to an employee. Luebker met with the individuals in his office and they resolved the matter between themselves.

Frankenstein determines the times for the breaks and lunch hours. The time sheets used before the timeclocks were installed were kept by Frankenstein, who also kept the attendance records. Employees at their respective sites seeking time off request such from Frankenstein or Tatum, who decide whether to grant the request. Overtime, in such situations as where an engineering department employee must be called in to replace an employee who calls in sick, is approved by Frankenstein or Tatum as to the individual employee who will receive the overtime work. Luebker testified that in emergency situations, where an employee cannot report at midnight, Frankenstein may obtain a replacement and incur an overtime payment. However, Luebker stated that in non-emergency cases, prior written approval for overtime must be obtained from him. Luebker's overall approval for overtime is necessary because he must authorize the expenditure of funds for the entire department.

As a rule, Luebker attempts to visit Caledonian Hospital once every 2 weeks. He is there more frequently when construction is taking place there.

Regarding cross-training, in 1989, Frankenstein and Tatum and their supervisors were given tours of the other's workplace so they could become familiar with the other site in the event of an emergency. Various pieces of equipment and materials have been brought from one site to the other by the

engineering department employees where the materials or equipment is located.

At the time of the hearing, the policies and procedures for the two engineering departments are the same, except that due to the difference in facilities, certain language in the policy documents differ.

On rare occasions, Luebker himself directed the Caledonian engineering staff, when for example, he was present at construction being done at that location, and instructed the Caledonian carpenters as to certain renovation work. Luebker undertook this supervision because Frankenstein was busy with another project.

Regarding transfers between sites, Luebker testified that the first temporary transfer occurred in March 1989, when a Caledonian painter was sent to Brooklyn Hospital to help with a weekend painting job. As to repairs, however, several years ago, a Brooklyn Hospital employee fixed the Caledonian ventilation system because no one at Caledonian Hospital was able to do so.

The separate directors of engineering and their supervisors meet daily with the employees under them. They have daily contact regarding work assignments and scheduling. At the time of the hearing, Luebker held weekly meetings with Frankenstein, and he also meets with Frankenstein and Tatum at least on a quarterly basis. At the weekly meetings, they discuss performance, what problems may have occurred in the prior week, and how to "proceed" in the next few days. At the quarterly meetings, they discuss Luebker's planning responsibilities, new policies and procedures, job descriptions, construction, personnel and purchases.

Luebker has been the corporate director of safety since 1986. There exist separate reporting responsibilities from Caledonian and Brooklyn Hospital for safety. Thus, Frankenstein reports to Luebker's assistant, Carol McCallum, regarding Caledonian safety, and another individual reports to her concerning Brooklyn Hospital safety. A corporate safety committee, chaired by Luebker, meets quarterly. It is comprised of the Caledonian and Brooklyn Hospital safety committees.

Regarding the housekeeping department, the management of the housekeeping services at both locations is differently operated. At about the time of the joint commission tentative notice of nonaccreditation, Respondent retained an outside housekeeping service, Service Master, to manage the housekeeping services at Caledonian Hospital. Service Master provides on-site supervisors and a department head for the Caledonian housekeeping department. The Caledonian housekeeping employees are supervised by the contractor Service Master, whose supervisors direct their work, keep their time records, and issue written warnings to employees. Regarding the hire of housekeeping employees, such employees obtain applications from the personnel department and are sent to the director of housekeeping, a Service Master employee. That individual interviews the applicant and a decision is made as to his hire. Service Master personnel also have suspended an employee, in the case of Gordon Ferguson, and employee. However, such suspension was countersigned by a human resources department official. At the time of the hearing, Service Master continued to manage the housekeeping function at Caledonian Hospital. In contrast, at all times at Brooklyn Hospital, the housekeeping function was

managed by Brooklyn Hospital personnel, and not an outside contractor.

In 1989, Brooklyn Hospital housekeeping employees performed clean up work at Caledonian Hospital following renovation of a Caledonian Hospital area. This occurred on two or three weekends.

Regarding the dietary department, Rosario Aguirre was appointed as the corporate director of food services in August 1988. She has overall responsibility for the food services at the Brooklyn and Caledonian sites. In October 1988, Jurlean Meadows was appointed the associate director of food services at Caledonian Hospital. Meadows is in overall charge of the day-to-day operations of the dietary department at Caledonian, is the person to whom the supervisors report. There are about 40 nonsupervisory food service employees, and 6 supervisors at Caledonian Hospital. Meadows schedules the days of work for the dietary employees, and supervisor Ulla Bishop assigns work to the dietary aides. Dietary aide Inez Matthews testified that Meadows granted her time off, and her work is evaluated by Bishop.

Aguirre has offices at both locations. At Caledonian, that consists of a desk used by Meadows. She meets with Meadows and the Brooklyn Hospital associate food services director, Carmelita Alas, at least once per week. She stated that on a daily basis, she discusses operations with them, including purchasing, and personnel matters. Aguirre stated that both associate directors issue disciplinary warnings after consulting with her, and suspend workers after consulting with the human resources department.

Aguirre further stated that she visits Caledonian Hospital a couple of times per week, or more often if needed, in order to make sure that the operation is run the same way as at Brooklyn Hospital. While there, she speaks to the employees, and asks them questions concerning their work. She stated that she changed certain types of operations at Caledonian: in August 1988, she authorized the institution of a store room at Caledonian; she replaced certain full-time employees with part-timers to ensure coverage which would be similar to that at Brooklyn Hospital; she changed the hours of some employees, so that they would begin work at 7 a.m. instead of at 6 a.m.; she began a policy of similar menus for the two locations, and after November 14, 1988, made the Caledonian cafeteria hours the same as at Brooklyn Hospital. Prior to that date, the hours were different.

Aguirre further stated that, regarding hiring, after an applicant is screened by the human resources department, she interviews the candidate, then checks with the associate directors, and then she hires the individual. Regarding scheduling, a master schedule is written by her on a biweekly basis. However, the associate directors may make a schedule only after consultation with her. She also stated that she actually schedules employees. She decides who is going to work based upon seniority and performance. Aguirre testified that she authorizes overtime work, but if she is not available, her associate directors or the supervisors may authorize overtime, and in any event, when overtime is needed, the supervisor first checks with Meadows or the assistant director of food services. Even when Aguirre is available, her associate directors decide which employee will work overtime, but if she is on the site they will seek her approval to have an employee work overtime.

Employee evaluations in the food service area are done by the supervisor. Aguirre has the "final say" in signing off the evaluation, except when she is not available.

A Caledonian Hospital dietary employee was trained at Brooklyn Hospital for a couple of days regarding ingredient assembly at some unknown time after Aguirre's appointment. A Brooklyn Hospital cook, Martinez, was trained at Caledonian so that in the event that there was a shortage of staff, he could be moved to Caledonian. That occurred after November 14, 1988. In late 1988 or early 1989, three Brooklyn Hospital dietary helpers went to Caledonian on about two or three occasions. In August or September 1989, two Caledonian employees were assigned to the tray line at Brooklyn Hospital for 1 day each so that they could observe its operation there.

Regarding the radiology department, Karen Buono became the administrator for radiology services in December 1988. However, in January 1986, she was given corporate responsibility for the radiology departments at Brooklyn and Caledonian Hospitals. Prior to that time, in 1984, she was responsible for Brooklyn Hospital, and upon her assumption of responsibilities for Caledonian in 1986 she was told to keep a "low profile" in Caledonian's activities in keeping with Respondent's plan of accretion avoidance. However, in the summer of 1988 she was told by corporate official Frank Goldstein to begin to fully integrate the departments in order to satisfy the joint commission requirements, and also in order to contain costs. She was not given similar instructions regarding the joint commission in 1986 when she was made responsible for Caledonian Hospital.

Ron DeFranco, chief technologist, was hired in December 1988, and is in charge of the radiology department at Caledonian Hospital. There are about 25 employees and 3 supervisors in the radiology department at Caledonian, and about 76 employees at Brooklyn Hospital.

Buono's office is at Brooklyn Hospital, but she visits Caledonian at least once per week to sign the payroll, observe the operations there and discuss problems and plans with DeFranco. DeFranco also visits Brooklyn Hospital, and he and Buono speak by phone each day. She also spoke with DeFranco's predecessor, Paul Sconzo, by phone each day. She discusses staffing with him and hiring. DeFranco conducts hiring interviews, and has authority to hire employees for Caledonian Hospital. Regarding discipline, Buono stated that DeFranco consults with her before imposing "formal" discipline such as verbal or written warnings. In 1989, Buono became involved in resolving a disagreement between an employee and his supervisor, and she gave advice to a worker who was contemplating resigning. Also, in 1989, she overruled DeFranco's imposition of suspension to an employee, but they had together agreed to suspend the individual. Only when a grievance was filed did Buono reverse the suspension.

Regarding hiring, consistent with the practice in other departments, after the position is approved, DeFranco interviews and hires applicants for Caledonian Hospital only. However, Buono has occasionally conducted the first interview of prospective employees, and she reviews the resume of the applicant and also consults with DeFranco and the Brooklyn Hospital chief technologist to learn what occurred during the interview.

Regarding cross-training, in December 1986, Caledonian Hospital radiology clerk Mary Marshall went to Brooklyn Hospital for about 1 hour on 1 day in order to view the file system there, to which Caledonian Hospital was changing. Prior to November 14, 1988, Brooklyn Hospital special procedures technician Apoute went to Caledonian Hospital for 1 day to teach certain techniques to the Caledonian staff. Technicians Miller and Ortiz did the same thing in the summer of 1987, for 1 day. After November 14, 1988, Caledonian Hospital employees Machin and Ott went to Brooklyn Hospital to observe procedures, and two Caledonian medical transcribers went to Brooklyn Hospital for 1 day. Brooklyn Hospital stenographer Stack went to Caledonian Hospital for 1 day.

At the time of the hearing, Mary Marshall regularly traveled to Brooklyn Hospital twice per week, apparently to perform stenography work there.

Supplies are frequently moved between the Brooklyn and Caledonian sites, for example, when one location is in need of a certain item. Currently, the policies and procedures and job descriptions are the same for employees at both sites. There is a combined quality assurance committee in the radiology department. The committee, which is comprised, in part, of employees from both sites, meet to discuss quality assurance matters.

At the time of the hearing, there were apparently many vacancies at Brooklyn Hospital for technical positions, and the supervisors at both sites communicate with each other in order to make available for Caledonian employees overtime or weekend work at Brooklyn Hospital.

At the time of the hearing, technicians and radiologists are on call during the evening and weekend hours, when no technicians or radiologists are on the premises. When they are on call, they are expected to be available for work at either site. Those technicians are employed at Brooklyn Hospital and they cover at Caledonian when on call. It should be noted that radiologists are not employees within any bargaining unit involved herein.

Caledonian Hospital darkroom technician Leonard Washington testified that DeFranco and Supervisor Sandra Ortega supervise him. They schedule his work, assign work to him, and grant overtime. Ortega evaluated his work, discussed his performance evaluation and signed it. She also issues warning notices. Washington also testified that when Buono visited Caledonian, she spoke with him concerning radiology matters. She has also borrowed supplies on three occasions in 1988. Mary Marshall stated that in 1987, Supervisors Sconzo and Ortega gave her a performance evaluation, and that she is granted vacation leave by DeFranco, who also authorizes her to do overtime work.

Regarding the laboratory or pathology department, Leslie James was appointed corporate administrator for laboratory services in May 1989. In that position, he is responsible for the administrative operation of the laboratories at both sites and their 200 employees, about 140 being bargaining unit employees. He formulates and monitors the budgets for the department.

Of the 200 employees, James has direct supervisory responsibility for about 25 at Brooklyn Hospital and 10 at Caledonian, who consist of phlebotomists and 2 secretaries.

Louis Farrer is responsible for laboratory operations at Caledonian. When James, who has offices at both sites but

regularly works at Brooklyn Hospital, visited Caledonian, he spoke with Farrer about operational problems and labor matters. He only discussed personnel matters when asked to become involved, which was not a routine occurrence.

Laboratory operations at the two sites are integrated. Each site performs procedures and tests for its patients and for patients at the other site, depending on the test required. This is done because certain sophisticated equipment is only located at one site, and such centralization of testing is more cost effective. It should be noted that since the time of the merger in 1982, such equipment was located at only one site, but used for patients at both locations. For example, specialized hematology procedures and chemistry tests are done at Brooklyn Hospital for patients at Caledonian. Electron microscopy procedures and certain immunology tests are done at Brooklyn Hospital for Caledonian patients. Similarly, the Caledonian laboratory performs a chemistry profile test for Brooklyn Hospital patients. The Caledonian laboratory began performing that test for Brooklyn Hospital patients in July 1988. As to that test, the test results, which are generated by the Caledonian equipment, are relayed to a printer located at Brooklyn Hospital. In late 1983, Brooklyn Hospital began performing special chemistry tests for Caledonian patients. The amount of tests performed increased each year, so that by the time of the hearing, a majority of such testing was done at Brooklyn Hospital.

In 1989, Caledonian Hospital laboratory department medical secretaries, a hematology technologist and a phlebotomist were temporarily assigned to Brooklyn Hospital. Similarly, Brooklyn Hospital blood drawing employees and phlebotomists have been temporarily assigned to Caledonian in 1989. In addition, Brooklyn Hospital technicians Johnson, Picard and Scott were temporarily assigned to Caledonian Hospital in 1989.

In July 1988, a Brooklyn Hospital hematology technologist permanently transferred to the same position at Caledonian. One year later, in July 1989, a Brooklyn Hospital supervisor transferred to Caledonian.

There is interaction between laboratory employees at both sites. For example, the testing of specimens between sites requires communication and contact regarding the delivery of the specimens and the results of the testing. Caledonian medical technologist Edward Elardo, however, testified that specimens are transported by the messenger service located at Brooklyn Hospital, and not by the laboratory employees. If equipment breaks down at one site, the employees at the other location may be called on to "troubleshoot" the machinery by phone. Equipment, supplies, and blood are shared between the sites, as needed.

James testified that the policies and procedures between both sites has been the same since before 1988.

Regarding labor relations matters in the laboratory department, James testified that whenever a disciplinary matter arises, the supervisor from that area discusses the situation with him. James stated that he does independent investigations concerning the alleged offense: he asks for documentation of the wrongdoing, for example, asks to see timecards if the employee has been chronically late; if a test was improperly done he will obtain the result from the nurse or laboratory. Both he and the supervisor then both determine the appropriate action to be taken. James asks the supervisor for a recommendation. If he believes that the supervisor's rec-

ommendation is inappropriate, he discusses it with the supervisor, and has the "final say" as to the measure of discipline. The supervisor issues a verbal or written warning, while a suspension or termination is handled by James' office, in consultation with the human resources department.

The supervisors at the two locations complete performance evaluations for the employees employed at that location, and they schedule the employees' work, overtime and vacations.

Regarding hiring, all applications for the laboratory departments at both sites are sent to James for screening. He then gives the applications to the respective director or supervisor for the conduct of an interview. If the employee is hired, James schedules a preemployment physical examination and tells the new employee his salary. He usually checks references of the new hire but where the employee is known to the director or supervisor, they will contact the references.

James is involved with scheduling of employees only if a supervisor tells him of a problem in scheduling. He leaves the scheduling of overtime to the discretion of the first line supervisor. If overtime becomes excessive he has spoken to the director about that matter.

Timecards are separately reviewed and initialed by the employee's supervisor.

Notwithstanding that a corporate director of finance has been employed at Respondent since the merger in 1982, the day-to-day operation of the finance function has been separated by location. Thus, the payroll operation, which is part of the finance department, has its own employees employed at Caledonian Hospital. Natalie Fowler, the payroll supervisor for Caledonian, has two payroll clerks who report to her. They perform Caledonian payroll work. Fowler reports to the corporate controller. Since 1987, the separate assistant controllers for each site were replaced by one assistant for both locations. There are also seven patient accounts employees at Caledonian Hospital. Their immediate supervisor works at the Brooklyn Hospital site, and they have been reporting to her since about August 1986. However, even prior to that time, the Caledonian patient accounts area has been supervised by personnel at the Brooklyn Hospital site.

Fowler receives payroll information, usually in the form of timecards setting forth the amounts needed to compute the payroll from the Caledonian departments. The department heads or supervisors at Caledonian send the completed timecards to Fowler. The employees' data is fed into a computer terminal at Caledonian Hospital which is connected to the mainframe computer located at Brooklyn Hospital. After the data is relayed, Fowler notifies the data processing department at Brooklyn Hospital and tells them to run the payroll. The paychecks have been generated at Brooklyn Hospital since 1982.

The Caledonian payroll, which is separate from the Brooklyn Hospital payroll, has been printed at Brooklyn Hospital since 1982. The patient accounts employees' timecards and the Caledonian managers' timecards are approved by corporate officials located at Brooklyn Hospital.

Wayne Keathley was appointed corporate director of professional services in February 1987. He stated that his appointment was directly related to the joint commission letter of tentative nonaccreditation received by Respondent. He is responsible for several departments, including admitting, quality assurance, medical records, social work services, utilization review, and discharge planning. Keathley stated,

however, that the joint commission did not require that a uniform medical records plan or a uniform admitting procedure be established.

Since the merger, there have been separate staffs at the Brooklyn Hospital and Caledonian Hospital locations in the departments of admitting, medical records, utilization review discharge planning, and social work.

Barbara Just, the director of census management, reports to Keathley. Just's office is at Brooklyn Hospital, but she visits Caledonian Hospital. There are separate admitting offices at Brooklyn Hospital and Caledonian Hospital. As of the time of Keathley's appointment, Pat Reilly, the director of admitting at Caledonian Hospital, is responsible to ensure that the admitting staff at Caledonian implements department policy. Brooklyn Hospital also has a director of admitting. There are separate admitting staffs at each location. Keathley stated that Reilly consults with Just concerning personnel decisions, and in consultation with Just, hires and evaluates the Caledonian admitting employees, and also schedules their hours and overtime. However, Keathley admitted not having first-hand knowledge of such consultation. His information comes only from Just. A written warning to Sharon Hall in September 1988, and a performance evaluation for Jean Burke in December 1988, both bear the signatures of Reilly, and no other supervisors or corporate officials.

Keathley has seen cross-training exercises conducted by Just and Reilly and Brooklyn Hospital director of admitting Kelman for the admitting staffs of both locations. Generally, the retrieval and assembly of Caledonian patient records are the responsibility of Caledonian medical records personnel, but in late 1988, and several times up until the time of the hearing, Brooklyn Hospital medical records employees have retrieved and prepared Caledonian patient records at Caledonian Hospital for the purpose of high profile reviews and presentations.

Errico, the emergency room admitting coordinator, a non-bargaining unit position, has authorized the admission to Caledonian Hospital, of emergency room patients who present themselves at the Brooklyn Hospital emergency room, and the reverse.

The admitting staff at each location uses the same admission form and uses a single corporatewide computer system which processes the patient admission information. The main computer is located at Brooklyn Hospital, but computer terminals are located at Caledonian Hospital, which the admitting registrars use to enter information concerning the new patient. There is communication between the admitting registrars at both sites concerning the location of a patient.

Regarding the medical records department, Keathley stated that the corporate director of medical records is Harry Gibbs. Gibbs is currently responsible for hiring and firing in that department, and consults with Keathley on cases of discharge. Caledonian Hospital's assistant director of medical records prior to November 14, 1988, Pamela Vaughan, and then Martha Miles, were responsible for the day-to-day supervision of the medical records staff, including the assignment of work. Miles kept the attendance records of the Caledonian staff, and scheduled the staff in consultation with Vaughan. Corrine Blake, the current assistant director, is also responsible for the day-to-day operation of the department. Between February 1987 and November 14, 1988, Liguina Reimers, the Brooklyn Hospital director of medical records, was given

certain corporatewide responsibility for medical records. Medical records policies, procedures and work rules were established by Reimers, and then revised in 1987 with the creation of the professional services division. As such, according to Keathley, she hired the Caledonian Hospital medical records staff during 1988, and was involved with Miles' scheduling of the staff. This, again, was what she told Keathley. He did not see any of the hiring interviews, nor could he recall the names of the involved applicants. It should be noted that employee Larry Whyte transferred from the central supply department to medical records in October 1988, and was accepted for transfer by Miles. In April 1989, his performance evaluation was signed by Miles.

The medical records department policy and procedures manual, which is applicable to both sites, was developed shortly after the creation of the professional services division in February 1987.

Keathley stated that the budget for the medical records department, which is larger for Brooklyn Hospital than it is for Caledonian, is treated in a flexible manner. If the Brooklyn Hospital's budget is overdrawn, he "overdraws" from that account and covers it with the Caledonian budget. The important factor is that the department, as a whole, is within its budget.

The utilization review and discharge planning department is involved with the periodic review of patients in order to determine whether they are still in need of hospitalization, and the determination of what services the patient will need upon discharge.

Keathley stated that this department is integrated through the use of standardized forms, cross-training of staff, and the use of supervisors and department heads to implement one plan and one standard for the entire hospital. The department has been headed, since, December 1988, by Dorothy Montague, the director of concurrent review and social work services. Martha Chambers, who reports to Montague, is the director of utilization review and discharge planning at both sites. Chambers' assistant director is also responsible for both sites. Chambers is responsible for routine human resources matters, including recruiting, hiring, and promotions. Keathley exercises "final review and veto power" over discharges. Keathley related a situation in which a Caledonian social worker was "monitored" by Montague, who advised Keathley of the matter. However, Deborah Motollo, who began work at about the time of the hearing, is responsible for the day-to-day supervision of utilization review and discharge planning at Caledonian Hospital. She is assigned predominantly to Caledonian.

Prior to Keathley's corporate appointment in February 1987, Aileen Corbie, the assistant director of utilization review, supervised the utilization review and discharge planning function at Caledonian Hospital, and served in that function until her retirement in early 1989. Corbie reported to Arthur Blutstein, the associate director of Caledonian. She was responsible for the day-to-day supervision of employees in that department, including the daily work assignments of the Caledonian utilization review and discharge planning employees.

The corporate quality assurance department, created in February 1987, has an office which is located at Brooklyn Hospital. At that time, a quality assurance committee was also established which is responsible for the quality assur-

ance program. The committee is a committee of the board of trustees. It is charged by a member of the board. One-half the membership of the committee consists of trustees. Other members include President Alley, physicians, and others.

The function of the quality assurance program is to establish, measure and enforce a single standard of care for the entire hospital. Each department in the hospital has its own quality assurance subcommittee, comprised of individuals from both sites. Each departmental subcommittee meets periodically to review and create its own standards, and submits a report to the quality assurance committee.

Regarding the social services department, Montague, who was appointed the corporate director of social services in September 1987, developed screening criteria for the social services staff to be used at both sites. These criteria, which are applied to every admission, contain information about the patient for use by the social services department. Until about September 1987, there was a separate associate director of social work at Caledonian Hospital, but in that month she was demoted to supervisor. Nevertheless, as supervisor of social work staff at Caledonian, she is in charge of the staff there and reports to Montague. There is a separate associate director of social work at Brooklyn Hospital, who also reports to Montague. At about the time of the hearing, due to unexpected resignations at Caledonian Hospital, Montague reassigned two Brooklyn Hospital social workers to Caledonian, and had social workers at Brooklyn Hospital work with those at Caledonian.

Regarding the respiratory therapy department, Stephen Schuh became the corporate director of respiratory care in July 1989. Schuh, who has offices at both locations, has an assistant, Elaine Terdoslavich, who reports to him concerning Caledonian Hospital. Terdoslavich makes work assignments to and schedules the Caledonian staff on a day-to-day basis, and maintains the time records for that staff, as does Schuh's assistant at Brooklyn Hospital. However, Schuh is shown the schedule on a monthly basis, and he "oversees" the scheduling. In situations where employees have the same day off, Schuh will become involved in resolving the matter. Terdoslavich helps him make the decision, and applies the seniority principle.

Schuh's two supervisors speak with him concerning disciplinary measures they are contemplating, and make a recommendation, but he has the final say. However, in the three instances of verbal warnings, Schuh followed Terdoslavich's recommendation for verbal warnings, which were administered by Terdoslavich. Regarding interviews of applicants, the assistant director at the respective site interviews the applicant and make recommendations to him. Schuh also interviews the candidate and makes the final decision.

Work on a common policy and procedure manual for Brooklyn Hospital and Caledonian Hospital was begun in late 1988 when Schuh was director of respiratory care at Brooklyn Hospital. He meets with the Caledonian assistant about twice per week, and discuss matters of concern to the department. Schuh also meets with the employees at both sites. There have been occasions, about five to six times, in 6 months beginning in July 1989, when employees from one site worked overtime at the other site in order to cover for absences.

There have been transfers in the respiratory therapy department. Tadbiri, a Caledonian unit employee permanently

transferred to Brooklyn Hospital in 1980. Supervisor Ansbro permanently transferred to Brooklyn Hospital as a staff member.

Each employee employed at the two sites went to the other location in April 1989 for 2 days for training. When needed, patient supplies are transferred between locations.

Frank Goldstein, the director of operations for Brooklyn Hospital in September 1987, became the acting director of operations for Caledonian Hospital in September 1988, and the corporate director of operations in February 1989.

In June 1989, Richard Mo-Ed was hired as the director of operations for Caledonian Hospital.

During his tenure as acting director of operations for Caledonian, Goldstein was responsible for various departments.

A stipulation was received, and there was testimony by Goldstein that, as of November 14, 1988, there were separate directors for each site in the communications department, physical therapy department, respiratory therapy department, pharmacy department, and separate supervisors in the central supply department for each site, separate divisional supervisors at the first line supervisor level at each site in the purchasing, storeroom and mail room, and separate divisional supervisors, who were immediate supervisors of the employees in the professional services departments which included admitting, medical records, utilization review and discharge planning, and social services.

Goldstein testified that the integration of the separate pharmacy departments was begun in November 1987, when it was decided that a single corporate formulary, a listing of all the drugs in the hospital, should be instituted. This system, which replaced the separate formularies in use by the two sites prior to that time, was completed in early 1988. At the same time, an emergency drug code listing was unified.

In about April 1989, a director of EKG services for both sites was appointed who is responsible for the supervision of all technical and clerical EKG staff persons.

There is an employees activity committee comprised of separate committees for the two sites. The committee undertakes activities to raise money for the needy. At the time of the hearing, the committees held joint meetings.

Prior to the recognition on November 14, 1988, all annual physical examinations for Caledonian employees were performed at the Caledonian clinic. Similarly, Brooklyn Hospital employees' examinations were done at Brooklyn Hospital.

Transfers of employees

Corporate Human Resource Director Thomas Grosso stated that prior to November 14, 1988, there was no written policy concerning permanent or temporary transfers between Brooklyn Hospital and Caledonian Hospital. As noted above, as of that date, the posting of jobs which were available at a particular site was done at that location only.

Regarding transfers of personnel between sites, the following bargaining unit employees transferred between sites: Rose Marie Heron, a laboratory technologist, transferred from Brooklyn Hospital to Caledonian Hospital in July 1988. Martin Ansbro, and Mohammed Tadbiri, respiratory therapists at Caledonian, transferred to the same titles at Brooklyn Hospital in July 1987 and September 1988, respectively. In October 1987, Caledonian Hospital staff registered nurse Kathleen Quirke transferred to Brooklyn Hospital to the

nonbargaining unit position of associate nursing care coordinator.

Caledonian Hospital Director of Nursing Keenan testified that she knew of no temporary transfer of Brooklyn Hospital bargaining unit nurses to the Caledonian Hospital staff, or of Caledonian staff nurses working at Brooklyn Hospital.

Keenan further stated that in mid-1989, Victoria Santos, a Caledonian Hospital operating room registrar, transferred to a secretarial position at Brooklyn Hospital. At the same time, about four to five nonsupervisory registered nurses were sent, at Corporate Director of Nursing Harrington's request, from Caledonian Hospital to the Brooklyn Hospital emergency room, delivery room and operating rooms, where they worked for 1 day because of the shortage of nurses at Brooklyn Hospital.

In the summer of 1989, Lydia Phang, an emergency room registrar transferred to the health management center in the same position, and nurse Braithwaite permanently transferred from Brooklyn Hospital to Caledonian.

Goldstein testified that he was not aware of any interchange of nonsupervisory employees between sites as of November 14, 1988, in the following departments: communications; pharmacy; radiology; dietary; central supply; EKG department; purchasing, storeroom and mailroom; building services; and laundry department;

The following nonbargaining unit personnel transferred between sites: Nancy Stoddard, the assistant director of nursing at Caledonian Hospital, transferred to the same title at Brooklyn Hospital in about May 1987. Brooklyn Hospital supervisor, Jurlean Meadows, transferred to a management position at Caledonian Hospital in October 1988. In February 1989, Kathleen Kerrigan, a supervisory nurse at Caledonian Hospital, transferred to a nonbargaining unit position in infection control at Brooklyn Hospital in February 1989.

Goldstein testified that he was aware of a food service employee who transferred in the food service department from one site to the other as of November 14, 1988.

Special concerns relating to the hospital industry

Grosso testified that, from a human resources perspective, there were business reasons for having one union at both sites which represents employees having the same, or similar job classifications. He stated that it was easier to administer the human resources function with one union, which would require less human resources staff, less financial burden, easier implementation of policies, and no "jurisdictional" issues, which might arise between two unions.

5. Postrecognition assistance to the Unions

The complaint also alleged that Respondent violated the Act by permitting Local 144 and Local 3 to meet with Caledonian Hospital employees on Caledonian property during worktime for the purpose of soliciting them to join those unions, and to authorize the deduction of moneys from their wages on behalf of the unions, and for other union business; and by permitting NYSNA to meet with Caledonian employees during worktimes, for the purpose of conducting a ratification vote with respect to a supplemental collective-bargaining agreement, and for other union business. Finally, the

complaint alleges that Sandra Ortega threatened Caledonian employees with discharge if they refused to join Local 144.

On November 28, 1988, Sandra Ortega, a supervisor in the radiology department told Mary Marshall, a Caledonian Hospital radiology clerk, that Local 144 was having a meeting in the hospital, and that she could attend the 10 a.m. meeting. At the meeting, Marshall observed other employees there. She attended from about 10:15 a.m. until 11:30 a.m. during her working hours, for which she was paid.

Marshall testified that following the meeting, Ortega told her that "they" are saying, apparently referring to Local 144, that Marshall would be discharged within days if she did not sign a card for Local 144. Ortega also told Marshall that there was nothing she [Ortega] could do as her hands were "tied." Ortega added that Marshall should have a choice in deciding whether to join or not join the union. Ortega did not testify.

In January 1989, Ortega told Marshall that a Local 144 meeting was being held and asked who wanted to attend. Marshall volunteered, and attended for 5 minutes, for which she was not docked any pay.

Renee Valazquez, a Local 144 business agent, conducted a union meeting on May 18, 1989, at Caledonian Hospital, from 10:30 a.m. to 2 p.m. Valazquez was told she could have the room she occupied by hospital officials Charles Moore and Myrna Branker. She stated that each employee who attended the meeting was on a break at the time of the meeting, but that some employees stayed during most of the 3-1/2 hour meeting.

Leonard Washington, a Caledonian darkroom technician, testified that in May 1989, his supervisor, Sandra Ortega, told him and Mary Marshall, a clerk in the radiology department, that Local 144 was having a meeting, and that they were permitted to attend. Marshall testified that she asked Ortega if she could go to the meeting, and Ortega replied that she was not stopping her from going. Marshall was present at the meeting, which was held during working time, for 1 hour, and she received her regular pay. Washington also was not on a break, and he was paid for the time during which he attended the meeting.

Frank Montemagno, a Local 3 business representative, testified that Respondent official Grosso gave him permission to meet with Caledonian employees at that location. On December 14, 1988, Montemagno met with about 12 to 14 engineering department employees for 1 hour in the morning. Caledonian Hospital Director of Engineering Frankenstein was called by Luebker some time after November 1988 and was asked by him to make a room available to a representative of Local 3. Subsequently, that union agent met with several of the engineering department's employees during the day shift, not during a break. No one was docked any pay for their attendance at that meeting.

Elise Conway, a representative of NYSNA, stated that Respondent official William Myhre helped her make arrangements to meet with the Caledonian Hospital nurses. Meetings were held on November 29, 1988, with the registered nurses from 7 to 9 a.m. and from 2 to 5 p.m. Conway stated that the nurses usually come to the meetings when they take their breaks.

Analysis and Discussion

The Evidence Received

At the outset of the hearing, in ruling on a motion to revoke a subpoena, I ruled, over the objections of General Counsel and the Charging Parties, that I would receive evidence of postrecognition events. During the hearing, evidence of postrecognition activities offered by the parties was received in evidence.

The Board has recently held, affirming a longstanding concept, that "the issue of whether a group of employees constituted an accretion to an existing bargaining unit 'must be determined on the facts that existed on the date of the union's demand.'" *GHR Energy Corp.*, 294 NLRB 1011, 1052 fn. 37 (1989); *Gould, Inc.*, 263 NLRB 442, 446 (1982).

Respondent urges that in deciding whether an accretion occurred, postrecognition evidence must be considered. The cases cited by Respondent, *King Radio Corp.*, 257 NLRB 521, 525 (1981); *Arundel Corp.*, 252 NLRB 397, 401 fn. 13 (1980); *Coinmeco, Inc.*, 200 NLRB 294, 299 (1972), all involved situations where the judge received evidence concerning facts relating to postrecognition events. However, the decisions did not turn upon those facts, there was no discussion by the Board of their relevance, and it appears that those facts were not necessary to the decision reached.

On the other hand, in *Gould*, the Board has specifically addressed this issue. Accordingly, although the recitation of the facts herein has included postrecognition evidence, my analysis relies upon the facts which existed on the date of the recognition of the unions, November 14, 1988.

Respondent urges that even though postrecognition events may not be relevant, evidence should be considered as to such postrecognition events as to which prerecognition plans had been made, but not implemented until after recognition. I have considered them on a case-by-case basis.

The accretion principles

An accretion is the "incorporation of employees into an already existing larger unit when such a community of interest exists among the entire group that the additional employees have no separate unit identity. Thus, they are properly governed by the larger group's choice of bargaining representative." *Reliable Trailer & Body*, 295 NLRB 1013 (1989), quoting *NLRB v. Security Columbian Banknote Co.*, 541 F.2d 135, 140 (3d Cir. 1976);

Essentially, the doctrine is designed to preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made. *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985).

The Board has followed a restrictive policy in finding accretion because it forecloses the employees' basic right to select their bargaining representative. . . .

The Board will not, under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity

of expressing their preference in a secret election. *Towne Ford Sales*, 270 NLRB 311 (1984).

See also *Kaynard v. Mego Corp.*, 633 F.2d 1026, 1030 (2d Cir. 1980), where the court stated that "the Board has traditionally been reluctant to find an accretion, even where the resulting unit would be appropriate, in those cases where a smaller unit, consisting solely of the accreted unit, would also be appropriate and the Section 7 rights of the accreted employees would be better preserved by denying the accretion."

The criteria used to determine whether employees should be accreted into an existing bargaining unit without an election include . . . geographic proximity, similarity of skills and functions, similarity of conditions of employment, centralization of the employer's administration, managerial and supervisory control, interchange between the employees, functional integration of the employer, and bargaining history. *Stevens Ford*, supra at 473.

A "balancing" of the elements bearing on a finding of accretion must be made because, in the same case, some elements favor such a finding, and others do not. *Gould, Inc.*, supra at 445.

As in accretion cases generally, there are factors favoring accretion, and factors indicating that accretion is not appropriate.

Those factors favoring accretion include the governing structure of the hospital as a whole. With respect to the evidence at the time of the recognition, November 14, 1988, Respondent was one corporate organization, having one board of trustees, one president and chief executive officer, and was accredited and licensed as one institution.

At the time of recognition, Respondent had a governing body in overall charge of both sites, including a vice president for finance, vice president for information systems, a single medical chairperson for each clinical department, a corporate director of human resources, a corporate director of professional services, a corporate director of facilities and construction management, a corporate director of nursing, a corporate director of nursing for special projects, a corporate director for nursing education, and a corporate director of food services.

As to its operation, at the time of recognition, its attending physicians admit patients to both locations, its residents rotate between the institutions, and its patients move readily from one site to another if they are in need of specialized testing available at one site or the other. Patients may be admitted to one site, but transferred to the other site if they are in need of specialized services or treatment provided only by the other site. Thirty to forty patients per day are transferred between sites for such services. As set forth above, Brooklyn Hospital and not Caledonian provides such important and widely used services as labor and delivery, CAT scan, cardiac catheterization, and certain intensive care services. The medical records of the patients also moved readily between sites. Specialized laboratory testing has been divided between the two sites, with certain types of tests being performed at one site for patients at the other site. The specimens and reports as to the findings of tests made on them

move between sites, and the test results are noted on patients' charts.

Thus, Respondent, at the time of recognition, had a functionally integrated operation. From the perspective of the needs of the patient and the availability of patient care, services, and treatment, the two sites operated as one. Decisions as to testing, treatment and care were thus made without regard to which location the patient happened to be admitted to. Respondent had single department directors for each clinical department, and rotations of residents between sites. Decisions as to medical care for the patient were made without regard to site, and once a decision was made as to testing, procedures to be performed on the patient, and a treatment plan, a hospitalwide determination was implemented—utilizing whatever resources were needed, and wherever found, to obtain the best possible result for the patient.

General Counsel argues that certain of the above facts, particularly the integration of the two facilities upon the merger as illustrated by the single board of trustees, the merger of the medical staffs, and the appointment of certain corporate officials and the treatment of patients and testing at both sites, should not be given much weight because they occurred at about the time of the merger, or shortly thereafter, and therefore did not result from some change in circumstances creating an accretion. General Counsel points to the fact that notwithstanding this integration, Respondent undertook a policy of accretion avoidance thereafter, and until its recognition of the Brooklyn Hospital unions. *Mercywood Health Building*, 287 NLRB 1114, 1115 (1988).

However, inasmuch as Respondent's operation, as a whole, is viewed at the time of the recognition, these factors must also be considered and given the weight to which they are entitled regardless of the events thereafter. Accordingly, I find that there is a great amount of functional integration between the Brooklyn Hospital and Caledonian Hospital locations.

The geographical separation of the two locations, only 3 miles and a 10-minute drive apart, does not disfavor accretion, when one considers the relatively short distance apart, notwithstanding the congested nature of Brooklyn's streets, since a shuttle van operates at regular intervals between the locations. In addition, patients are moved by a common ambulance service between the two sites. *Montefiore Hospital Center*, 261 NLRB 569, 574 (1982). However, the separation of the two facilities, taken together with the separate treatment of the Caledonian employees in terms of supervision, and historical nonunion status, are factors which tend to favor a finding of nonaccretion.

However, I do not believe that the record factors favoring accretion are sufficient to overcome the factors disfavoring accretion. When viewed with respect to the operation of the hospital as it affects the Caledonian employees, it is clear that the Caledonian employees possess a separate identity from that of the Brooklyn Hospital employees.

I reach this conclusion based on the facts, and pursuant to the long-held policy that a finding of accretion, imposing a union on employees that they have not selected, and foreclosing such employees from their right to choose a labor organization of their own choosing, is restrictively applied.

Respondent pursued a policy of accretion avoidance from the time of the merger until virtually the time of recognition of the Brooklyn Hospital unions. The actions it took after re-

ceiving the letter of tentative nonaccreditation from the joint commission, were, for the most part, changes which resulted in centralization of the corporate hierarchy, which did not affect the day-to-day activities of the employees. Indeed, Respondent's policy concerning accretion avoidance continued in full force until about the time of recognition of the Brooklyn Hospital unions for the Caledonian employees. Its instructions to its supervisory hierarchy, cautioning against creating circumstances fostering accretion, also continued until about the time of recognition.

As of November 14, 1988, the date of recognition of the Brooklyn Hospital unions, the Caledonian Hospital, as to its day-to-day operation concerning its employees, had its own supervisory structure and identity. Until the time of recognition, the entire hiring process, including the screening, interview and decisions as to hire, was done at Caledonian Hospital. Such interviews were conducted by that location's department heads, and decisions as to the hire of candidates was made by Caledonian Hospital's supervisors and personnel department located at that site.

The day-to-day supervision of employees, including assignment of work, work schedules, assignment of days off for vacations, and time off for breaks and leave, were made by supervisors. The personnel records of the employees were kept at Caledonian Hospital, and the supervisors kept the time sheets and attendance records of the employees under their command.

Performance evaluations were done by supervisors and department heads and signed by them.

Discipline of employees, such as warnings and reprimands were done by Caledonian supervisors and department heads. Although severe discipline such as suspensions and discharges were made in consultation with the corporate human resources department, the supervisor or department head who was familiar with the situation investigated the incident, made a recommendation to the corporate human resources department, and initiated the discipline.

Although there were visits by corporate heads of departments, and communications by them with the Caledonian site department heads and supervisors, such discussions concerned policy matters. Although there was evidence that labor relations matters were discussed at such times, the implementation, on a day-to-day basis, of such policies, was done at Caledonian Hospital by the supervisors in charge.

In addition, posting of job vacancies was done by site. Also, at that time, the wages, hours, and benefits of the unrepresented Caledonian employees were different than the Brooklyn Hospital employees, who were represented by labor organizations.

At the time of recognition, there was very little interchange or transfer of employees between the sites. Such interchange as occurred, was sporadic and occurred for a very brief period of time. Although there was contact between certain classifications of employees, where, for example, a patient was transferred from one site to another and the nurses sought information not contained on the patient's chart, or where test results were transmitted to the nurses for inclusion in the chart, such contact is not sufficient to support a finding that Caledonian Hospital's employees shared a community of interest with the employees of Brooklyn Hospital.

Here, the evidence establishes that, at the time of recognition, the Caledonian employees have not lost their separate identity. They performed essentially the same functions they had performed since the merger of the two hospitals, and although certain corporate functions were instituted leading to centralization of managerial activities, their terms and conditions of employment were different, supervision remained essentially the same, being performed by Caledonian supervisors, and there was very minimal interchange of such employees with Brooklyn Hospital's employees. *Reliable Trail-er & Body*, 295 NLRB 1013 (1989).

Although Respondent's structure became more centralized with the appointment of corporate officers and other changes effected after the merger, nevertheless the supervisors "have considerable autonomy with respect to the day-to-day operations" *Save Mart of Modesto*, 293 NLRB 1190, 1193 (1989).

Respondent asserts that changes occurred as a result of the joint commission's letter in 1986. Some changes did occur, but they did not affect the day-to-day activities of the employees, and did not cause those employees to lose their separate identity.

When viewed in a most basic light, Respondent sought to control which union, if any, the Caledonian employees selected. At the time of the merger, in 1982, Respondent undertook a policy of attempting to avoid a finding of accretion of the Caledonian employees to the Brooklyn Hospital units, by instructing its supervisors in maintaining a separation of the two units in order to preserve its nonunion status—to honor the rights of employees to select a union of their choice, and also to have a nonunion facility in the event of a labor dispute at Brooklyn Hospital. Six years later, it solicited the Brooklyn Hospital unions and recognized them for the Caledonian employees, 2 years after the joint commission letter. These actions by Respondent, particularly the precipitous recognition of the unions after a long-term policy of accretion avoidance, flies in the face of the important principle of freedom of choice that must be accorded to employees to decide their own choice of representative.

It must be noted that this is not the typical accretion situation, where new employees are immediately added to an existing unit as a result of a consolidation of operations or a purchase of a business. Rather, the Caledonian Hospital employees have been a part of Respondent's facility for 6 years, prior to their attempted accretion to the existing Brooklyn Hospital units. The Board has noted this difference in *United Parcel Service*, 303 NLRB 326 (1991). The Board stated that accretion is not required or warranted, "where the parties to a bargaining relationship have historically failed to include an existing group of employees from a bargaining unit." The Board added:

If a group of employees comes into existence during the term of a contract for an existing unit, then the parties must timely address the unit status of those employees prior to executing a successor agreement. Should they fail to do so, the parties have only themselves to blame for any instability resulting from the existence of a group of employees having interests in common with unit employees but excluded from representation in the unit.

It is the fact of historical exclusion that is determinative. (Emphasis in original.)

Here, the Caledonian employees had been deliberately excluded from the Brooklyn Hospital collective-bargaining units from the time of the merger in 1982, until November 1988. During that period of time, Respondent entered into successive contracts with the Brooklyn Hospital unions for the employees at Brooklyn Hospital represented by such unions.

Respondent argues that changed circumstances will negate any history of exclusion of a group. This is a case where the Respondent's Caledonian Hospital bargaining unit existed from 1982, the time of the merger, for 6 years, until the time of recognition of the Brooklyn Hospital unions for them. The only significant changes which occurred from the time of the merger to the time of recognition, were certain hierarchical changes in corporate structure which did not affect the day-to-day activities, supervision, or terms and conditions of employment of the Caledonian employees.

I have considered Respondent's argument that the congressional admonition against the proliferation of bargaining units in the health care industry requires a finding of accretion. I have also considered Grosso's testimony that it would be administratively easier and less costly to operate with one union representing all the employees at both sites, and that "jurisdictional disputes" would be avoided. However, when considering the factors of administrative ease, efficiency and cost against the evidence presented here, the separate self-identity of the Caledonian Hospital employees is not outweighed by such considerations, especially where the accretion doctrine has been treated as a narrow exception because it contradicts the principle of employee self determination. It should also be noted that the Board has considered the Congressional admonition in its rulemaking, and has determined that eight collective-bargaining units are appropriate in the health care industry. 284 NLRB 1515 (1987). The Supreme Court has upheld the Board's exercise of its rulemaking power. *American Hospital Assn. v. NLRB*, 113 L.Ed. 2d 675, 111 S.Ct. 1539 (1991).

Respondent cites certain representation cases, including *West Jersey Health System*, 293 NLRB 749 (1989) for the proposition as to the appropriateness of single-facility units in an employer's multidivisional system. It is important to note, however, that such cases, whether a single-facility or multiple facility unit is found appropriate, the employees will be able to exercise their right to select the representative of their choice. Here, however, the question is whether the Caledonian employees will have that right. Nevertheless, the facts in *West Jersey* are distinguishable. In that case, the day-to-day operations of the facility (division) are handled by the departmental directors, who are various corporate officials, who travel to the divisions on a regular basis. The division administrators, who are stationed in the location at issue, are responsible only for general implementation of policy and budget oversight within his own division. The departmental directors, on the other hand, are responsible for hiring, firing, evaluations, scheduling, discipline, and grievances. Employees routinely rotate between divisions or regularly work temporarily at other divisions. Here, however, at the time of recognition, with respect to the employees employed at Caledonian Hospital, that location, the administrators located at Cal-

edonian and the supervisors of the employees there, exercised great authority and supervisory control over them with respect to day-to-day activities, and there was minimal interchange or transfer between sites.

It is of particular note that with respect to the unit of licensed practical nurses, the number of such nurses at Caledonian Hospital, approximately 58 outnumbered the approximately 50 Brooklyn Hospital licensed practical nurses. In these circumstances, the Board has found that employees cannot be accreted into a unit where the represented employees do not constitute a majority of the ultimately accreted unit. *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1338 (1988).

I accordingly find and conclude that on about November 14, 1988, Respondent unlawfully recognized Local 144, NYSNA, Local 721 and Local 3 and unlawfully applied the terms of its collective-bargaining agreements with those unions to its employees who were employed at Caledonian Hospital, and who were not represented by any labor organization, at a time when a majority of those employees had not designated those labor organizations as their representative, and at a time when no lawful accretion had occurred.

Postcognition assistance to the unions

The complaint alleges that Respondent unlawfully permitted Locals 144, Local 3 and NYSNA to meet with employees during their worktime in order to engage in union business. The evidence establishes that Respondent's officials permitted those three unions to meet on its premises for the purpose of union activities. However, the testimony established that such meetings occurred on employees' working time only in the cases of Local 144 and Local 3. Inasmuch as Respondent unlawfully recognized Local 144 and Local 3 for the Caledonian employees, Respondent unlawfully facilitated access to its premises of Local 144 and Local 3. *Safeway Stores*, 276 NLRB 944, fn. 2 (1985). *Jolog Sportswear, Inc.*, 128 NLRB 886 (1960), cited by Respondent, is distinguishable. That case, unlike the instant case, involved a situation where a neutral employer granted access to a union. I will recommend dismissal of the complaint allegation as to NYSNA.

The complaint also alleges that Respondent threatened employees with discharge if they did not join Local 144. This allegation relates to the testimony of Mary Marshall, who stated that following a meeting of Local 144, her Supervisor Sandra Ortega told her that "they" said that she would be discharged if she did not sign a card for Local 144. Ortega added that she could do nothing as her hands were "tied," but told Marshall that she should have a choice as to whether to join Local 144. On these facts, I cannot find that Respondent threatened Marshall with discharge if she did not join Local 144. The alleged threat was vague, came from the union, and was not at all a threat made by Ortega. In addition, Ortega retreated from the apparent Local 144 threat by assuring Marshall that in her opinion, she should have a choice as to whether to join Local 144. I will accordingly recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, The Brooklyn Hospital Center, is an employer engaged in commerce within the meaning of Sec-

tion 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO (Local 144), New York State Nurses Association (NYSNA), Licensed Practical Nurses, Technicians and Health Care Workers of New York, Inc., Local 721, Service Employees International Union, AFL-CIO (Local 721), Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Local 3), Local 819, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Local 819), and Local 1199, Drug, Hospital & Health Care Employees Union, Retail, Wholesale and Department Store Union, AFL-CIO (Local 1199), are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent, by recognizing Local 144, NYSNA, Local 721, and Local 3, and applying the terms of its collective-bargaining agreements with Local 144, NYSNA, Local 721 and Local 3, on about November 14, 1988, to its employees who were employed at its Caledonian Hospital location, and who were not represented by any labor organization, at a time when a majority of those employees had not designated those unions as their representative, has engaged in unfair labor practices within the meaning of Section 8(a)(2), (3), and (1) of the Act.

4. By permitting Local 3 and Local 144 access to its premises for the purpose of engaging in union business during the worktime of its employees, Respondent violated Section 8(a)(2) and (1) of the Act.

5. Respondent has not violated the Act, as alleged in the complaint, by permitting access to NYSNA to conduct union activities on its premises.

6. Respondent has not violated the Act, as alleged in the complaint, by threatening its employees with discharge if they refused to join Local 144.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully recognized and applied the terms of its collective-bargaining agreements with Local 144, NYSNA, Local 721, and Local 3, on about November 14, 1988, to its employees who were employed at its Caledonian Hospital location, and who were not represented by any labor organization, at a time when a majority of those employees had not designated those unions as their representative, I shall recommend that Respondent be ordered to withdraw and withhold all recognition from Local 144, NYSNA, Local 721, and Local 3 as the collective-bargaining representative of those employees, and further that Respondent be ordered to cease applying to those employees the terms of Respondent's collective-bargaining agreements with those labor organizations, or any extension, renewal, modification, or superseding agreement, unless or until those labor organizations are certified by the Board as such representatives.

Nothing in this decision should be construed as requiring Respondent to rescind benefits conferred on its employees who were employed at its Caledonian Hospital location, and who were not represented by any labor organization as the

result of the unlawful application of the contractual provisions to them.

[Recommended Order omitted from publication.]